ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF NET METERING AND THE IMPLEMENTATION OF ACT 827 OF 2015	)))	DOCKET NO. 16-027-R ORDER NO. 10

ORDER

On March 20, 2015, by Order No. 1 in this docket, the Arkansas Public Service Commission (Commission) initiated this rulemaking proceeding to implement Act 827 of 2015, which amended the Arkansas Renewable Energy Development Act of 2001 (AREDA). AREDA established net-metering in Arkansas and is implemented through the *Net-Metering Rules* (NMRs) of the Commission, which are modified by this Order.

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1. Procedural History

Order No. 1 established a docket to gather information to be used to determine appropriate rates, terms, and conditions under Act 827 of 2015 (Act 827) for net-metering contracts, including any changes necessary to the Commission's NMRs. Act 827 provides, *inter alia*, that the Commission, after notice and an opportunity for public comment:

> (1) Shall establish appropriate rates, terms, and conditions for net-metering contracts, including:
>
> (A)(i) A requirement that the rates charged to each net-metering customer recover the electric utility's entire cost of providing service to each net-metering customer within each of the electricity utility's class of customers.
>
> (ii) The electric utility's entire cost of providing service to each net-metering customer within each of the electric utility's class of customers under subdivision (b)(1)(A)(i) of this section:
>
> (a) Includes without limitation any quantifiable additional cost associated with the net-metering customer's use of the electric utility's capacity, distribution system, or transmission system and any effect on the electric utility's reliability; and
>
> (b) Is net of any quantifiable benefits associated with the interconnection with and providing service to the net-metering customer, including without limitation benefits to the electric utility's capacity, reliability, distribution system, or transmission system . . .

Act 827 at § 3, codified at Ark. Code Ann. § 23-18-604(b)(1)(Repl. 2015). Act 827 amended AREDA, in which the General Assembly found that net-metering "encourages the use of renewable energy resources and renewable energy technologies" and that:

> [i]ncreasing the consumption of renewable resources promotes the wise use of Arkansas's natural energy resources to meet a growing energy

> demand, increases Arkansas's 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 agricultural sectors, reduces environmental stresses from energy production, and provides greater consumer choices.

Ark. Code Ann. § 23-18-602(a). Act 827 therefore requires the Commission to examine the balance of the costs and benefits of net-metering, within the framework of a statutory subchapter aimed at promoting customer-owned, distributed renewable energy production.

AREDA provides that the Commission:

> May increase the generating capacity limits for individual net-metering facilities if doing so results in distribution system, environmental, or public policy benefits . . . .

Ark. Code Ann. § 23-18-604(b)(5). Act 827 added that the Commission:

> May allow a net-metering facility with a generating capacity that exceeds three hundred kilowatts (300 kW) if:
>
> (A) the net-metering facility is not for residential use; and
>
> (B) Allowing an increased generating capacity for the net-metering facility would increase the state's ability to attract business to Arkansas.

Ark. Code Ann. § 23-18-604(b)(7).

In Order No. 1, the Commission noted that Act 827's provisions regarding the costs and benefits of net-metering and approval of net-metering facilities larger than 300 kW raise a series of questions that should be considered in the development of net-metering policy and any resulting changes to the NMRs (Ark. Code Ann. §§ 23-18-604(b)(5) and (7)). As part of consideration of any such changes, the Commission established a procedural schedule under which Staff would file Initial Comments and a

"strawman" proposal for amendments to the NMRs, followed by responsive comments or expert testimony by the Parties, including answers to a series of questions posed by the Commission. The questions were divided into two groups:

> Section A questions relate to guiding principles for the establishment of appropriate rates, terms and conditions for net-metering contracts under the provisions of Ark. Code Ann. § 23-18-604(b), as amended by Act 827 of 2015 (hereinafter, "Rate Issues").
>
> Section B questions relate to guidelines for approval of non-residential net-metering facilities exceeding 300 kW.

The following parties are participants in the docket: all jurisdictional electric public utilities,[1] the Attorney General (AG), the General Staff (Staff) of the Commission, and the following intervenors: Mr. William Ball; Mr. Francis M. Kelly; Ms. Pat Costner; Mr. Louis Contreras; Wal-Mart Stores Arkansas, LLC and Sam's West, Inc. (Walmart); Scenic Hill Solar, LLC (Scenic Hill); Solar Energy Arkansas, Inc. (SEA); the Arkansas Advanced Energy Association, Inc. (AAEA); The Alliance for Solar Choice (TASC); the Sierra Club (Sierra); Arkansas Electric Energy Consumers, Inc. (AEEC); and the National Audubon Society (Audubon), collectively referred to as the Parties.

On July 22, 2016, Staff filed Initial Comments, proposed amendments to the NMRs, and responses to the Commission's questions. On August 18, 2016, by Order No.

[1] Entergy Arkansas, Inc. (EAI), Southwestern Electric Power Company (SWEPCO), Oklahoma Gas and Electric Company (OG&E), Empire District Electric Company (Empire), Arkansas Electric Cooperative Corporation (AECC), Arkansas Valley Electric Cooperative Corporation, Ashley-Chicot Electric Cooperative, Inc., C& L Electric Cooperative Corporation, Carroll Electric Cooperative Corporation, Clay County Electric Cooperative Corporation, Craighead Electric Cooperative Corporation, Farmers Electric Cooperative Corporation, First Electric Cooperative Corporation, Mississippi County Electric Cooperative, Inc., North Arkansas Electric Cooperative, Inc., Ouachita Electric Cooperative Corporation, Ozarks Electric Cooperative Corporation, Petit Jean Electric Cooperative Corporation, Rich Mountain Electric Cooperative, Inc., South Central Arkansas Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corporation, and Woodruff Electric Cooperative Corporation.

4 in this docket, the Commission approved a unanimous proposal by the Parties to bifurcate the issues in this docket, such that this Phase 1 of the docket addresses the adoption of amended NMRs, including guidelines for approval of non-residential net-metering facilities exceeding 300 kW, and Phase 2 will address Rate Issues after investigation by a Net-Metering Working Group established pursuant to that Order. Pursuant to Order No. 4, the Parties addressed the remaining issues in accordance with the Phase 1 procedural schedule: (1) Staff's proposed revisions to the NMRs and Appendices; (2) the effect of Act 827's passage on the currently-effective *Standard Interconnection Agreements for Net-Metering Facilities* (Appendix A to the current Net-Metering Rules), including from the effective date of the Act until the Commission approves a new rate structure for net-metering customers (NMCs), including the issue of whether current customers should be grandfathered under the current rate structure; and (3) policies and issues related to the questions included under Section B, concerning approval of non-residential net-metering facilities exceeding 300 kW. On September 9, 2016, the Parties subsequently filed Reply and Surreply Comments and Testimony, including the filing by Staff of mark-up and clean versions of Staff's proposed strawman NMRs, with the mark-up highlighted to reflect the changes recommended in its Surreply Comments and Attachments 1 and 2 (as amended by Errata filed on September 29, 2016).

On October 4, 2016, the Commission conducted a public hearing on the Phase 1 issues. Pursuant to Order No. 8 on October 21, 2016, the Commission requested parties who wished to address the question of ownership within the definition of "net-metering customer" to provide responsive initial and reply legal briefs on certain questions. Initial

Briefs were filed on November 2, 2016, and Reply Briefs on November 9, 2016.

Forty-nine written public comments were received in this Docket and six oral public comments were made at the hearing supporting net-metering and renewable energy and opposing barriers to net-metering and renewable energy.

2. Detailed, Section-by-Section Rule Modifications by Staff, Comments and Testimony of the Parties, and Commission Findings on Contested Phase 1 Issues

The following summary of section-specific comments and testimony and Staff recommendations, followed by Commission findings, is based upon the Commission's review of Staff's recommended proposed Net-Metering Rules shown below, as modified by Staff in its Surreply Comments and Attachment 1 and 2 thereto (as amended by Errata filed on September 29, 2016) in response to the comments of the parties. Provisions of the NMRs which are unchanged from the existing NMRs last amended by Order Nos. 7 and 10 in Docket No. 12-060-R are shown in black. Provisions that are deleted, new, or modified by Staff's Initial Comments are shown in blue or ~~blue strikethrough~~.[2] Provisions that are deleted, new, or modified by Staff's Errata Surreply Comments in response to the Parties are shown in blue and ~~blue strikethrough~~ with yellow highlighting. The Commission accepts as reasonable and in the public interest the proposed changes or additions that are uncontested by any party. The Commission's modifications to Staff's modified NMRs are shown in black-line Commission Attachment A, with additions shown in **bold red underlined** and deletions shown in ~~**bold red strikethrough**~~. A clean version of the Commission's modified NMRs is included as Commission Attachment B.

[2] Edits to capitalize defined terms are not shown here but do appear on Attachment A (the marked-up version).

DEFINITIONS/SECTION 1. GENERAL PROVISIONS

Staff Initial and Surreply Comments

Staff proposes to modify the current NMR Definitions to include additional terms and their definitions necessary for proper interpretation of the NMRs. The Definitions come from Acts 1781 of 2001, 1027 of 2007, and 827 of 2015, as codified at Ark. Code Ann. § 23-18-601 *et seq*. (Repl. 2015), comments and responses of the Parties, and other sources.

Costner Reply Comments

Ms. Costner recommends using capital letters in the rule only when absolutely necessary and replacing the term "facility" with the term "resource" within the definitions of specific renewable generation technologies that are eligible for net-metering. Costner Reply at 12 and 2.

Staff Surreply Comments

Staff capitalizes defined terms, consistent with other Commission rules. Staff also favors using the term "resource" because it is the term used in the statute. Staff Surreply at 3.

Commission Findings

With the exceptions explained below, the Commission finds Staff's proposed Definitions to be reasonable and in the public interest. The Commission further finds that the Definitions section should be reformatted and placed under the umbrella of Section 1 as Rule 1.01, rather than as a stand-alone section, to make it more consistent with the Commission's Rules, including the *Rules of Practice and Procedure* (RPPs), *Transportation Network Company Services Rules*, and *Pole*

Attachment Rules. Each definition should also be sub-numbered as (a), (b), (c), etc. The revised numbering of the rules in Section 1 is used throughout this Order.

The Commission also adds the following introduction to the Definitions section, consistent with other Commission Rules:

> **Rule 1.01 Definitions**
>
> **The following definitions shall apply throughout the Net-Metering Rules (NMRs) except as otherwise required by the context, and any references to the NMRs shall include these definitions:**

On the issues raised by Ms. Costner, for consistency with other rules and with the statute, the Commission approves Staff's approach. In particular, the Commission adopts Staff's adherence to the language of definitions provided by statute. The Commission, however, on the basis of administrative efficiency and as reflected in the attached rules, makes the following non-substantive revision to the form of Staff's rule: statutory definitions shall be incorporated by reference to the statute, so that any future amendments to the statute will be reflected automatically in the Commission's NMRs.

> **(a) Additional Meter**
>
> A meter associated with the Net-Metering Customer's account that the Net-Metering Customer may credit with Net Excess Generation from the ~~Designated~~ Generation Meter. Additional Meter(s): 1) shall be under common ownership within a single Electric Utility's service area; 2) shall be used to measure the Net-Metering Customer's requirements for electricity; 3) may be in a different class of service than the ~~Designated~~ Generation Meter; 4) shall be assigned to one, and only one ~~Designated~~ Generation Meter; 5) shall not be a ~~Designated~~ Generation Meter; and 6) shall not be associated with unmetered service.

Audubon Initial[3] Comments

[3] Audubon's Comments filed 8/19/16 were titled "Initial" although the procedural schedule called for "Reply" comments in this round.

Audubon objects to Staff's proposal to prohibit an Additional Meter from being designated as both a Designated Meter and an Additional Meter, arguing that Staff's proposed change is antithetical to the legislative intent of Net-Metering as per Section 2 of AREDA, which includes the phrase "and provides greater consumer choices." Audubon argues that Staff's intention to simplify the billing process involved in Net-Metering does not justify creating an additional regulatory burden on customer choices. Audubon Initial at 10-11.

EAI Reply Comments

EAI recommends changing the definition of an Additional Meter to exclude accounts served on rate schedules designed specifically for seasonal applications. EAI Reply at 9.

Staff Surreply Comments

In response to Audubon, Staff continues to support the position taken in its Initial Comments, asserting that it strikes an appropriate balance between promoting the legislative intent of AREDA and addressing the complexities of billing interrelationships associated with aggregating meters. Staff notes that the Commission has recognized that billing complexity should be considered in addressing aggregated accounts, citing the finding in Order No. 7 of Docket No. 12-060-R that, "Thus, in order to reduce potential complexity, excess generation credits from more than one designated net-metering facility shall not be credited to more than one additional account."

In response to EAI, Staff acknowledges that there may be unique circumstances associated with billing seasonal rate schedules. However, rather than including a

provision in the NMRs to address circumstances that may be unique to each utility, Staff recommends that this billing issue be addressed within the utility's Net-Metering Tariff. Staff recommends against making a change to the definition of Additional Meter to exclude accounts served on rate schedules designed specifically for seasonal applications.

Commission Findings

The Commission finds Staff's positions on these issues to be reasonable and in the public interest. The Commission accepts Staff's proposed definition of Additional Meter, as amended to substitute the term "Generation Meter" for "Designated Meter" (explained below).

(b) Annual Billing Cycle

The normal annual fiscal accounting period used by the utility.

(No contested issues)

(c) Avoided Cost

The costs to an Electric Utility of electric energy or capacity, or both, that, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source. Avoided Costs shall be determined under Ark. Code Ann. § 23-3-704. 23-18-604(c)(1).

Pulaski County Reply Comments

Pulaski County comments that the definition of Avoided Cost refers to the term "qualifying facility" without defining the term elsewhere. Pulaski County Reply at 1.

Staff Surreply Comments

Staff agrees that adding the definition of a Qualifying Facility would provide clarity and thus adds to the Definition section the definition of that term as stated in the Commission's *Cogeneration Rules*.

Commission Findings

The Commission finds Staff's recommendation to include a definition of Avoided Cost to be reasonable and in the public interest. However, in accordance with the Commission's directives *supra*, the Commission adopts a definition which references rather than repeats the statutory definition of "Avoided Costs," as also referenced in Ark. Code Ann. § 23-18-604(c)(1)(A) :

As defined in Ark. Code Ann. § 23-3-702(1).

(d) Billing Period
The billing period for net-metering will be the same as the billing period under the customer's applicable standard rate schedule.

(No contested issues)

(e) Biomass Resource~~facility~~
A ~~facility~~ resource that may use one or more organic fuel sources that can either be processed into synthetic fuels or burned directly to produce steam or electricity, provided that the resources are renewable, environmentally sustainable in their production and use, and the process of conversion to electricity results in a net environmental benefit. This includes, but is not limited to, dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, and other accepted organic, renewable waste materials.

(No contested issues)

(f) Commission
The Arkansas Public Service Commission.

(No contested issues)

(g) Electric Utility
A public or investor-owned utility, an electric cooperative, municipal utility, or any private power supplier or marketer that is engaged in the business of supplying electric energy to the ultimate customer or any customer class within the state.

(No contested issues)

(h) Fuel Cell Resource~~facility~~
A ~~facility~~resource that converts the chemical energy of a fuel directly to direct

current electricity without intermediate combustion or thermal cycles.

(No contested issues)

(i) **Generation~~Designated~~ Meter**
The meter associated with the Net-Metering Customer's account to which the Net-Metering Facility is physically attached.

Audubon Initial Comments

Audubon recommends using the defined term "Generation Meter" rather than "Designated Meter," on the basis that it is more descriptive. Audubon Initial at 11.

Staff Surreply Comments

Staff agrees with Audubon and revises the Definitions Section and remainder of the Rules accordingly. Staff Surreply at 5.

Commission Findings

The Commission agrees with Staff's recommendation to accept Audubon's recommendation to replace "Designated Meter" with "Generation Meter" and, therefore, the term has been revised in this definition and throughout the NMRs.

(j) **Geothermal Resource~~facility~~**
A~~n electric generating facility~~ resource in which the prime mover is a steam turbine. The steam is generated in the earth by heat from the earth's magma.

(No contested issues)

(k) **Hydroelectric Resource~~facility~~**
A~~n electric generating facility~~ resource in which the prime mover is a water wheel. The water wheel is driven by falling water.

(No contested issues)

(l) **Micro Turbine Resource~~facility~~**
A ~~facility~~ resource that uses a small combustion turbine to produce electricity.

(No contested issues)

(m) **Net Excess Generation**

The amount of electricity that a Net-Metering Customer has fed back to the Electric Utility that exceeds the amount of electricity used by that customer during the applicable period.

(n) **Net Excess Generation Credits**
Uncredited customer generated kilowatt hours remaining in a Net-Metering Customer's account at the close of a Billing Period to be credited, or, pursuant to Rule 2.05, purchased by the utility in a future billing period.

Pulaski County Reply Comments

Pulaski County recommends amending the definition of "Net Excess Generation" to clarify that it is the customer's "Net-Metering Facility" that feeds back to the grid, rather than the "Net-Metering Customer." Pulaski County Reply at 1.

Costner Reply Comments

Ms. Costner suggests clarifying that Net Excess Generation is the "difference between the amount of electricity" that a NMC supplies to the utility and the amount of electricity that the Utility has supplied to the NMC. Costner Reply at 3.

Audubon Initial Comments

Audubon suggests that Net Excess Generation is "the total monthly kilowatt hours generated via a Net-Metering Facility minus the monthly kilowatt hours consumed…" at the meter. Audubon similarly suggests substituting this definition for Staff's definition of "Net Excess Generation Credits." Audubon Initial at 12.

Commission Findings

Staff's definition of Net Excess Generation tracks the statutory definition. However, in accordance with the Commission's directives *supra*, the Commission adopts a definition which references rather than repeats the statutory definition:

As defined in Ark. Code Ann. § 23-18-603(3).

The Commission also accepts Staff's addition to the NMRs of a definition of Net

Excess Generation Credits. The Commission notes that AREDA refers to both net excess generation and net excess generation credits. Therefore, the adoption of this definition recognizes the distinction between those terms.

(o) Net-Metering
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.

Pulaski County Reply Comments and Costner Reply Comments

Pulaski County and Ms. Costner recommend clarifying changes to the definition of "Net-Metering," which Staff resists on the same basis that it is statutorily defined. Pulaski County Reply at 1; Costner Reply at 3.

Commission Findings

The Commission again finds that the statutory definition is adequately clear in this case. In accordance with the Commission's directives *supra*, the Commission adopts a definition which references rather than repeats the statutory definition:

As defined in Ark. Code Ann. § 23-18-603(4).

(p) Net-Metering Customer

An owner of a Net-Metering Facility.

Pulaski County Response

Pulaski County raises, *inter alia*, the issue of the "bounds of the quality, quantity, or nature of the ownership interest required to satisfy the threshold question of whether an individual or entity is an owner" of a net-metering facility (NMF). Pulaski County recommends to the Commission that any individual or entity having any quantifiable, undivided fee interest in the NMF be recognized as an owner and, as such, qualified as a Net-Metering Customer. Pulaski County asserts that "an owner" must have a distinct

meaning from "the owner." Based upon this distinction, Pulaski County opines that "an owner" must be recognized as meaning any individual or entity having an ownership interest and that "an owner" must not be confined to exclude certain ownership interests from the definition. Pulaski County Response at 2.

Pulaski County remarks in its Response that a long-term lease estate constitutes an ownership interest and that a tenant becomes the possessory owner of an estate and indicia of ownership passes to a tenant for that period. *Id.* Pulaski County cites a number of state cases, including *Munson v. Wade*, in which it contends that state courts have found that a leasehold interest is a personal property interest, as chattel real, and is considered personal property. *Id.* at 3-4.

Walmart Reply Comments[4]

Walmart states that Staff's proposed definition of NMC and the resulting interpretation is insufficient and confusing and could be interpreted as contrary to the Act 827's purpose. Walmart Reply Comments at 2. Walmart observes that the plain meaning of "an" preserves the possibility of more than one owner of a NMF. It notes that there is no statutory prohibition against multiple owners or differing ownership interests, nor has there been any showing of a need for Commission rules or interpretations having that effect. *Id.* at 3.

Walmart states that the term "owner" does not require, nor is it restricted to, any type of legal interest, ownership percentage, or location, and asserts that a mere possessory or relational interest is sufficient. Walmart states that the plain meanings of the words used in the statutes and the proposed rules defining NMC and NMF do not

[4] Walmart filed as one document both its *Reply Comments In Response to Order No. 1* and *Reply Comments in Response to the Initial Comments of the General Staff, Proposed Amendments to the Net-Metering Rules, and Responses to the Commission Questions*.

restrict net-metering to electric customers that finance, build, own, and operate the net-metering equipment. It recommends that additional language be added to the statutes to clarify this point. *Id.* at 4-5.

Walmart opines that the proposed definition of NMC will conflict with the Commission's *General Service Rules* (GSRs) in that there is no ownership requirement whatsoever for being an electric "Customer," which is defined in the GSRs as "Any person or entity who has *applied for* and *agreed to pay for* [electric] utility service. (emphasis added). Walmart states that imposing a requirement that the electric customer build the NMF will result in less net-metering and would be contrary to the purpose of Act 827. Walmart remarks that there is nothing in the record to establish a compelling public interest for the requirement, which will result in the Commission dictating how private businesses would invest their capital and run their businesses if they chose to net-meter. *Id.* at 6-7.

AECC Surreply Comments

AECC takes the position that lessees are not owners. AECC opines that a basic rule of statutory construction is to give effect to the intent of the legislature. It also states that when a statute is clear, the intent must be based on the plain meaning of the language used. AECC maintains that the term "owner" denotes a higher interest than that possessed by a lessee. It states an owner is someone who has the right to possess, use, and convey something. AECC remarks that while a lessee may temporarily obtain the right to possess or use a NMF, a lessee's ability to do so is granted at the discretion of the owner. AECC claims that allowing a lessee to have the same rights as an owner of a NMF in a net-metering agreement with the utility is contrary to Arkansas law. AECC

Surreply at 3-4.

AECC remarks that the Commission's decision in Order No. 7 of Docket No. 12-060-R that "customers must own the facility or facilities" is highly persuasive and states that the precedent will not be overturned unless it is clearly wrong. AECC argues that the General Assembly's lack of alterations to the definition of NMC or owner shows that the General Assembly has adopted the Commission's interpretation of owner. *Id.* at 4-5.

AECC states that Pulaski County's comparison of the facts in *Munson v. Wade*, with the situation of a lessee of a solar array and the electricity it produces is misplaced. AECC argues that the finding in the *Munson* case did not rely on a statute that is similar, equally restrictive, or relevant like the statute being addressed in this docket. *Id.* at 5.

Costner Surreply Comments

Ms. Costner supports Pulaski County's interpretation of owner as including any individual or entity having any quantifiable, undivided fee interest in the NMF, including an individual or entity owning a leasehold estate in a NMF. Costner Surreply to Comments and Testimonies at 4-5.

EAI Surreply Comments

EAI points out that Walmart acknowledges that the current and proposed definition of NMC is taken verbatim from Act 827's statutory predecessor. EAI concludes that Walmart's proposed alternative definition of NMC would create confusion and uncertainty with respect to who is eligible to receive net-metering service under the approved net-metering tariff. EAI Surreply at 7-8.

EAI replies to Pulaski County by acknowledging that the statute refers to "an" owner instead of "the" owner but contends that the language does not convey a statutory

intent to consider an entity that leases the solar facility to be an "owner." The conclusion EAI reaches is that the phrase "an owner" conveys the intent to recognize that there may be more than a single owner. It remarks that Pulaski County does not address in its analysis whether the NMC would own or lease the land while leasing the solar facility, or what type of lease it would be, or the term of any such lease. It notes that the net-metering statutes do not define or treat a lessee as an owner and that a lease of a solar facility is never referenced in the statutes. *Id*. at 8-9.

EAI opines that there are flaws in Pulaski County's analogy of solar leases to oil and gas leases and notes that Pulaski County does not cite any legal authority that adopts the County's analogy. EAI explains that a possessory interest in the solar facility by virtue of a lease to operate the facility does not carry with it full ownership control of the electricity produced. *Id*. at 9-10.

EAI notes that in Order No. 7 in Docket No. 12-060-R, the Commission rejected the request of some parties to recognize that a customer leasing a solar facility and seeking to aggregate accounts served by a particular utility would meet the definition of a NMC. EAI offers that the issue of ownership is one that should be discussed by the net-metering working group for purposes of developing an amendment to the statute to permit leasing and exclude other third-party ownership arrangements. *Id*. at 10.

OG&E Surreply Comments

OG&E objects to the expansion of the definition of owner if it permits, to some extent, the introduction of retail wheeling and open access. OG&E states that an expansion of the definition that would allow retail wheeling is beyond the scope of net-metering and the legislative intent. OG&E Surreply at 2.

SWEPCO Surreply Comments

SWEPCO's position is that many of the other parties' positions are beyond the realm of consideration in this docket since AREDA defines a NMC as an owner of the NMF. SWEPCO disagrees with Walmart by pointing out that Staff's definition of NMC is taken verbatim from the language used by the legislature in the statute. SWEPCO Surreply at 5-6.

SWEPCO disagrees with Walmart's position that the "an" used in the definition denotes the possibility that more than one owner for one facility is eligible as a NMC. It argues that this position is at odds with all the other references to NMC in AREDA and notes examples in AREDA that reference a singular NMC. SWEPCO states that Walmart's request to expand the statutory definition of owner is not necessary. *Id.* at 7.

SWEPCO states that Pulaski County's positions are not permissible under the law or Commission precedent in Docket No. 12-060-R. SWEPCO reiterates that AREDA cannot be construed to allow more than one owner or a lessee. SWEPCO cites the *Munson* case holding that a lessee of land for the purpose of growing crops has no ownership or interest in the land upon which the crops are grown. SWEPCO notes that the General Assembly did not change the definition of NMC in Act 827 in response to the Commission's finding in Docket No. 12-060-R. *Id.* at 7-9.

Staff Surreply Comments

Staff takes the position that the term "owner" as commonly used includes full possessory rights and does not include a lessee. Countering Pulaski County and Walmart, Staff explains that "an" is an indefinite article used to modify non-specific or non-particular nouns, interchangeable with "any" in the appropriate context, and that

"an" does not change the meaning of the term owner. Staff Surreply at 7-8.

Staff remarks that an owner means someone who legally possesses something, compared to a lease or leasehold which is a contract by which a party conveys real estate, equipment, or facilities with specific terms for rent and duration. Staff notes that the Legislature could have included the term lease or lessee in the definition of NMC and further states that the Commission should not expand the plain language of the statute. *Id*. at 7-9.

Staff points out that the definition of NMC has been in place since AREDA was adopted in 2001. It notes that the Commission has used the term owner in the application of other regulations as an individual with full possessory interest, such as the definition of Pole Owner from the *Pole Attachment Rules*. Like other parties, it notes that the Legislature is presumed to be familiar with the Commission's interpretations and, if it disagrees with those interpretations, can amend the statutes. Staff remarks that the legislature amended the definition of NMF in Act 827 but not that of NMC. It states that when a known statute has been re-enacted in terms, its known interpretation will be presumed to have been also adopted by the legislature. *Id*. at 9.

AAEA Public Hearing Testimony

AAEA witness Ken Smith notes that other states provide some clarity in the law to explain what types of arrangements were allowed under net-metering. He also notes that AAEA made comments in Docket No. 16-028-U that recommend changes to clarify ownership and/or expand it to include lease arrangements to remove ambiguity. T. 560-62.

AECC Public Hearing Testimony

In response to a question whether a husband, wife, and financing company can own a NMF and negotiate the benefit of the system so that it looks like a lease but would legally be co-ownership, AECC witness Daniel Riedel responds that his cooperative does not investigate in detail to try to discover who the owner is, but that there is an ownership affirmation that is part of the application process. He explains that the applicant certifies to the cooperative that the applicant is the owner of the NMF. Mr. Riedel also notes that if the husband and wife are both on the account then his cooperative would recognize them both as owners. He remarks that the name on the bill, the individual responsible for paying the bill, must be the owner of the NMF. T. 770-71.

Audubon Public Hearing Testimony

Audubon witness Gary Moody notes that one of Audubon's Arkansas offices has not installed a solar array since the organization cannot share ownership with another entity that may take advantage of an income tax credit. T. 940.

EAI Public Hearing Testimony

EAI witness Amy Westmoreland states that there could be more than one owner of a solar array. T. 759.

Pulaski County Public Hearing Testimony

Adam Fogleman, on behalf of Pulaski County, states that Pulaski County seeks a "clarification" rather than an expansion of the existing definition of ownership. He explains that Docket No. 12-060-R dealt with whether third party ownership would allow for some other beneficiary to net meter while the current docket deals with the question of first party ownership (by a lessee) and not third party ownership. Mr.

Fogleman further states that because the ownership issue is directly related to the accounting method of a NMC, this docket is more appropriate for the definition of ownership than Docket No. 16-028-U. T. 878-79.

Scenic Hill Public Hearing Testimony

Scenic Hill witness Bill Halter testifies that it is common across the country for multiple parties to have an ownership interest in an asset and that the possibility is open for the Commission to find that a party with an ownership interest falls under net-metering. Mr. Halter notes that there are states that explicitly allow leasing and third-party ownership and that half of the net-metering facilities around the country are third-party owned. Mr. Halter encourages the Commission to consider the ownership issue as one more way to unlock the possibility of deployments of renewable energy. T. 560-61.

Walmart Public Hearing Testimony

Walmart witness Ken Baker asserts that whether an entity leases the system, has the system on its roof, or has a third party power purchase agreement, the entity is possessing the system and it is thus a form of ownership. He opines that a leasehold interest is a form of ownership. Mr. Baker states that the legislature intended for the Commission to look at the definition of ownership in a broad sense, and he notes that this docket provides the Commission an opportunity to do so. T. 880-81.

Mr. Baker notes that this docket is the appropriate docket to address the ownership issue. He notes that the cases cited by Staff in the context of the grandfathering issue which could be applicable to the ownership issue also discuss interpreting statutes broadly. Mr. Baker states that the fundamental canon of statutory construction is that the words of a statute must be read in their context and with a big

view to their place in the overall statutory scheme. He encourages the Commission to exercise the authority that the legislature intended and take the opportunity to move Arkansas up the ladder to be one of the top renewable states in the country. T. 881-84.

Commission Order No. 8

Order No. 8, issued on October 21, 2016, provided the parties an opportunity to address the following questions:

1. Does "owner" as used in Ark. Code Ann. § 23-18-603(5) include a person with a leasehold interest? If so, what type or types of leases confer ownership under the Arkansas Renewable Energy Development Act of 2001 (AREDA) and how should they be defined to provide clarity and certainty within the law? Are there any types of leases where a contracting party would be excluded from being characterized as an owner? Do interests in specific types of leases such as a capital leases, lease-purchase agreements, synthetic leases, sale-leaseback, or long term leases qualify as "ownership"? Discuss any relevant differences between utility law, real property law, personal property law, tax law, common law, etc. Discuss the relevance to public utility law and AREDA.

2. Is there a minimum percentage of ownership to qualify as an owner under Ark. Code Ann. § 23-18-603(5)? For example, would a person with one percent ownership interest still qualify as an owner of a net metering facility under AREDA?

3. To any degree not addressed in the questions above, do the examples raised for the first time in Pulaski County's opening statement further inform the interpretation of Net Metering Customer under AREDA?

Order No. 8 at 2-3.

AECC Initial Brief

AECC states that the term owner as used in Ark. Code Ann. § 23-18-603(5) does not include a person with a leasehold interest. It claims that for the term owner to include a lessee, the Commission would have to go beyond the plain language and read into the law a meaning not intended by the legislature. AECC Initial Brief at (unnumbered) 2-4.

AECC states that the General Assembly did not define NMC to include lessees and that without a statutory directive to the contrary, lessees are not owners. AECC remarks that an owner denotes a higher possessory interest and legal entitlement than what is held by a lessee. It cites the definition of "owner" from *Black's Law Dictionary* as "someone who has the right to possess, use, and convey something." AECC notes that a lessee might temporarily obtain the right to possess or even use a NMF but that the lessee's rights are derivative of and originate from the owner. It states that a lessee cannot be equal to an owner based on that line of thought. *Id.* at (unnumbered) 4.

AECC opines that the Commission has already held that an owner is not a third-party lessee, pointing to Order No. 7 from Docket No. 12-060-R. AECC states that the Commission's adherence to its decisions is necessary and proper for the regularity and uniformity which provides litigants certainty of the rules by which they must be governed in the conducting of their cases. AECC argues that precedent should govern unless it is patently wrong or manifestly unjust and that Pulaski County has cited no reason why adherence to the past interpretation of owner is patently wrong or manifestly unjust. AECC notes that the Commission's order in Docket No. 12-060-R provides an interpretation of a fundamental definition in the application of AREDA, whereas the case law cited by Pulaski County was issued 76 years prior to Act 827. *Id.* at (unnumbered) 4-6.

AECC remarks that the General Assembly is presumed to have been aware of Order No. 7 in Docket No. 12-060-R and thus adopted that interpretation of "owner." It explains that the General Assembly did not attempt to change the definition of owner in Act 827 and as a consequence, it adopted the Commission's interpretation from Order

No. 7 of Docket No. 12-060-R. *Id*. at (unnumbered) 6-7.

AECC states that the General Assembly has recognized there is a difference between owners and lessees for purposes of regulating utilities, giving the example of its sale, lease, and repurchase of Independence Steam Electric Station.. It remarks that under the relevant statutes regarding the purchase or lease of utility facilities the definitions of owner and lessee are distinct. *Id*. at (unnumbered) 8-9.

AECC opines that there is no minimum percentage of ownership prescribed by Ark. Code Ann. § 23-18-603(5) and it would be inappropriate for the Commission to assign a percentage. *Id*. at (unnumbered) 9-10.

Audubon Initial Brief

Audubon states that the definition of owner includes a person with a leasehold estate, citing Ark. Code Ann. § 1-2-202, which requires a liberal construction of all general terms used in any statute in order to carry out the legislative intent. Audubon posits that inclusion of a lessee under the definition of owner would better reflect the intent of AREDA. It argues that the character of customer ownership is not material to the functioning of the net-metering tariff. Audubon notes the importance of ownership of public utility generation but does not see it as analogous to issues of ownership of generation by a customer. Audubon Initial Brief at 1-2.

Audubon remarks that Louisiana's net-metering statutes are similar to Arkansas's, including the definition of NMC. It explains that Louisiana implicitly approves of leased systems by defining parameters on how a lease for a residential property can be eligible for a Louisiana tax credit. *Id*. at 2.

Audubon opines that there is no minimum percentage of ownership to qualify as

a NMC, arguing that prohibiting a customer from net-metering based on ownership status interferes with the free disposition of property and hinders private finance arrangements. Audubon explains that leasing by solar developers enables access to favorable financial terms and states that the Commission should not apply net-metering laws in a manner that favors one form of solar business development over others. *Id*. at 3-4.

Audubon notes that two of the three examples provided by Pulaski County include "lessee" in the definition of "owner." It also attaches a table that includes net-metering laws from various states including Maine. Audubon proposes its own definition that specifically includes a customer in a third-party lease. *Id*. at 4-5.

EAI Initial Brief

EAI responds to Pulaski County by noting that in AREDA an owner is not defined as including a lessee and that the concept of a customer leasing a solar array does not involve chattel real, because a customer does not lease real property when leasing a solar array. It further remarks that a solar array does not arise out of real property as do minerals that lie under real property that may be produced as natural gas for sale by the lessee. EAI Brief at 2-5.

EAI contrasts the authorities cited by Pulaski County by stating that a lease of a solar system will entitle the lessee to the right to consume the electricity produced but no right to sell the electricity to other customers or to a wholesale market. EAI notes that none of these legal authorities hold that a right to consume electricity amounts to a lessee obtaining an ownership right in the solar system. *Id*. at 5-6.

EAI states that the statute does not specify a minimum percentage of ownership.

However, EAI interprets AREDA to mean that no more than one NMC can own a NMF, but that a NMC can elect to assign net-excess generation from the NMF to multiple account locations with some limitations. *Id*. at 5-6.

OG&E Initial Brief

OG&E states that owner and a holder of a leasehold interest are distinct as they hold different rights, title, and interest, and bear different risks to property. OG&E points out that after the Commission's decision in Docket No. 12-060-R, the General Assembly could have but made no modifications to AREDA in Act 827 to include lessees of net-metering equipment and facilities. OG&E states that any decision by the Commission to include lessees as owners would contradict the plain language of AREDA. OG&E Initial Brief at 1-2.

OG&E asserts that the term "owner" is plain and unambiguous and is not subject to numerous interpretations. It discusses Arkansas law on statutory construction and cites *Hempstead County Hunting Club, Inc. v. Ark. Public Service Comm'n* as establishing that the rules of statutory construction apply to utility law. OG&E discusses the definitions of "own" and "lease" found in the *Merriam-Webster Dictionary* and how those definitions are different. OG&E notes that the Arkansas Constitution defines owners as the holder of the fee, citing Ark. Const. art. 19, § 27. *Id*. at 2-4.

OG&E remarks that Arkansas law has differentiated between owner and lessee. OG&E states that the Court's finding in *Smith v. Improvement District of Texarkana*, cited by Pulaski County and AAEA, is that a lessee is not an owner. It notes that the definition of public utility contains an exemption for equipment or facilities leased under a net lease directly to a public utility. OG&E points out that lease, sell, and

acquire are listed in the statute that requires Commission approval of a transfer of interest in a public utility and other statutes distinguish between the words own and lease by listing both terms in the statutes. OG&E concludes that if the Legislature intended for the term owner to cover lessees then it would have included language in the definition to express that intent. *Id.* at 4-7.

OG&E states the statute makes no provision for partial ownership of a NMF. It notes that the Legislature referred to singular customers taking part in the net-metering program and provides examples of those references. It argues that the question posed in Order No. 8 concerning a one percent owner recognizes the need for ownership of the NMF to be held solely by the customer of the public utility. OG&E states that allowing more than one owner will open AREDA to various schemes or artifices to bring a customer within the definition of NMC. OG&E states that such an interpretation would open the Commission to case-by-case review of such contracts to determine the real nature of ownership. *Id.* at 7-9.

In response to Pulaski County, OG&E notes that the Joint Municipal Electric Power Generation Act specifically allows municipalities to take part in projects through leasing arrangements, and it is clear the General Assembly contemplated leasehold estates under these statutes. It notes that definition of owner under the Motor Vehicle Act is written to include a lessee as well as other laws pertaining to the sales tax and certificate of title for cars. It argues that condemnation law recognizes that a person holding any interest in a property taken for public use is entitled to just compensation, but differentiates AREDA which has no provisions to include leasehold estates. *Id.* at 9-12.

Pulaski County/AAEA Initial Brief

Pulaski County and AAEA argue that an owner should include a person with a leasehold interest. Pulaski County and AAEA state that two issues must be examined when a lessee seeks to exercise its ownership rights for the purposes of net-metering. The first issue is whether the lessee binds the property, and the fee owner, beyond the term that a lessee's ownership interest allows. The second issue is whether the purpose of the lease is consistent with the lessee's exercise of rights granted under AREDA. Pulaski County and AAEA posit that if the answer is no to the first issue and yes to the second issue then the Commission should authorize a lessee to be an owner for purposes of Ark. Code Ann. § 23-18-603(5). PC/AAEA Initial Brief at 1.

Pulaski County and AAEA point out that ownership entails a bundle of rights, including interests other than a fee simple. *Id.* at 2-3. Pulaski County and AAEA discuss examples in which the Arkansas Legislature or Arkansas Supreme Court recognize that an entity's leasehold interest is either an ownership interest or the legal equivalent of an ownership interest, such as the Joint Municipal Electric Power Generation Act and two eminent domain cases. *Id.* at 4-5.

Pulaski County and AAEA remark that that there are various areas of law in Arkansas and other jurisdictions where an owner includes a lessee. *Id.* at 5-6. Pulaski County and AAEA opine that the legislative purpose of AREDA mandates a definition of owner inclusive of lessees and that such an interpretation is consistent with Ark. Code Ann. § 1-2-202. They state that a definition of ownership that encompasses leasehold estates would accomplish the General Assembly's objectives and the purpose of AREDA. *Id.* at 6-7.

Pulaski County and AAEA state that AREDA is silent on the type, or types, of leases that confer ownership so the appropriate focus is on the rights and obligations created therein instead of the property itself. They state that if a lessee is leasing a NMF with the purpose of generating electricity, exercising its right by utilizing the power, and not binding the fee owner for a term longer than the lease, then that lessee should be recognized by the Commission as an owner and qualify as a NMC. *Id.* at 8-9.

Pulaski County and AAEA state that there are types of leases where a contracting party would not be characterized as an owner but that an interest in specific types of leases such as capital leases, lease-purchase agreements, synthetic leases, sale-leaseback, or long term leases would constitute an ownership interest. *Id.* at 9-11.

Pulaski County and AAEA state that the relevance to public utility law and AREDA of leases and leasehold interests is that public utility law, as regulated by the Commission, is intended to ensure adequate service, prevent discrimination and unfair practices, and protect consumers and utilities from unreasonable demands. Pulaski County and AAEA cite Ark. Code Ann. § 23-2-301 as empowering the Commission to include lessees in the definition of owner to ensure adequate service is provided, that discrimination and unfair practices do not occur, and that consumers and utilities are protected from unreasonable demands. *Id.* at 12-13.

Pulaski County and AAEA state that no minimum percentage of ownership is needed as there is no authority to support a position to have a minimum percentage within AREDA or under non-AREDA Arkansas laws. They contend that any determination by the Commission that a minimum percentage of ownership is necessary to qualify as an owner would be arbitrary and contrary to the General Assembly's intent.

Id. at 13.

Pulaski County and AAEA discuss the similarities between oil and gas leases and the leases for solar arrays and how the case law for oil and gas leases is applicable in the latter context. Pulaski County and AAEA reiterate that a solar panel leased pursuant to a long-term lease is a chattel real which can be considered ownership by the lessee. *Id*. at 13-14.

Scenic Hill Initial Brief

Scenic Hill states that Ark. Code Ann. § 23-18-603(5) includes a person with a leasehold interest. It notes that AREDA uses the term "an owner," marks the distinction of this term from "owner" or "the owner," and states that the use indicates the intent to allow multiple owners. Scenic Hill states that a person may hold legal and/or equitable title to real or personal property which are part of the bundle of rights in ownership and that a lessee must be recognized as an owner to give effect to this principle. Scenic Hill remarks that the Commission and Arkansas courts have found ownership to include leasehold interests, referencing examples discussed by Pulaski County. Scenic Hill Initial Brief at 1-2.

Scenic Hill explains that whether a particular type of lease confers an ownership interest is based on the interests conveyed in the lease. It states that the three leasehold examples provided in Order No. 8 of this Docket support the position that the term owner under AREDA should include a lessee. Scenic Hill states that the equitable interest created by the lease confers an ownership interest under AREDA. It explains that under Arkansas Uniform Commercial Code Chapter 2a, there are multiple contexts in which a lessee has a form of ownership. Scenic Hill remarks that the lessee owns the

right to possession and use and that a lease can provide an insurable interest, which implies that the lessee's interest is a form of ownership. *Id*. at 2-4.

Scenic Hill opines that including a lessee as an owner promotes the policy goals of AREDA. Scenic Hill argues that a minimum ownership is not required under AREDA. *Id*. at 4-6.

SWEPCO Initial Brief

SWEPCO states that the term owner should not be interpreted to include an individual who possesses a leasehold interest in the NMF. It references the "plain meaning" rule of statutory construction, the definition of owner provided by *Black's Law Dictionary*, and case law from various jurisdictions to support the position that an owner of property is a person whom is vested with dominion, ownership, or title to property. SWEPCO notes that the *Smith* case found a lessee is not an owner. SWEPCO Initial Brief at 1-2. SWEPCO notes that the holdings of *Hyde v. Shine* and *Munson* establish that a leasehold interest in real property is not considered ownership of the real property. SWEPCO provides a number of citations to cases that have held a lessee is not the same as an owner in the context of tax law. *Id*. at 3.

SWEPCO says that allowing a person with a fractional percentage of ownership in a NMF to be an "owner" is bad policy and does not appear to be the result intended by the General Assembly. SWEPCO acknowledges that the presence of the word "an" could reasonably be interpreted to mean that there can be more than one owner of a net-metering facility, but argues that the Commission should not focus on the "an" used in the statute but should take into consideration all of the other parts of AREDA. SWEPCO opines that looking at AREDA as a whole, it is apparent that the Legislature intended for

the owner to have one-hundred percent interest in the NMF. *Id.* at 4. In response to one of the questions posed in Order No. 8 in this docket, SWEPCO states that Pulaski County's examples used in its opening statement do not further inform the interpretation of NMC under AREDA. *Id.* at 4-5.

Walmart Initial Brief

Walmart explains that the General Assembly delegated the question of whether the term "owner" includes leaseholds to the Commission, which should use its expertise to establish policies that will encourage net-metering. It claims that the evidentiary and legal standards by which the Commission's policies will be judged are the "appropriateness" to which the policies encourage an increase in net-metering. Walmart remarks that the record before the Commission supports and compels the determination that the term owner includes a person with a leasehold interest. Walmart Initial Brief at 2-3.

Walmart argues there is substantial evidence on the record that net-metering in Arkansas will be encouraged by including leasehold interests in the definition of NMC, stating that a broader interpretation of Act 827 will encourage net-metering by allowing a greater variety of arrangements rather than a "one-size-fits-all" approach. While acknowledging that the record includes evidence that planning and operational issues might arise from a broader interpretation, Walmart argues that there is no evidence that a restrictive interpretation of Ark. Code Ann. § 23-18-603(5) will encourage renewable-source net-metering in Arkansas, which is the criterion the Commission must apply pursuant to Ark. Code Ann. § 23-18-603(b)(1). *Id.* at 3-4.

Walmart discusses the definition of owner in *Black's Law Dictionary,* describing

"owner" as a person vested with one or more interests, and suggests that an owner does not have to have full possession of a property but need only have a partial right to possess, use, or convey the property. Walmart also cites the statutory definition of owner found at Ark. Code Ann. § 18-28-201(11), which recognizes that an owner need only have a legal equitable interest in the property, and argues that the lessee of a renewable energy system has one or more interests that are vested in the renewable energy system and that a lessee of a renewable energy system is its owner. *Id.* at 4-5.

Walmart discusses the Arkansas Supreme Court case *Prickett v. Farrel* in which the Court rejected a narrow interpretation of the term "owner" due to the Court's consideration of the legislative purpose of the statute and adopted a broad interpretation to accomplish the statute's legislative purpose. Walmart advocates for the same approach in this docket. To support its position that the term "owner" includes a person with a leasehold interest, Walmart cites two more cases which addressed lessee's rights under leases for hunting and for oil and gas. *Id.* at 5-6.

Walmart states that if the lease gives the lessee rights in the property then the lease should be interpreted to create an ownership interest in the property. Walmart adds that the meaning of owner should be specifically defined in order to add clarity and certainty to AREDA, noting that there is no prohibition against agency rules supplementing statutory language as needed to interpret the statute. Walmart provides a proposed definition of owner as "a person in whom one or more interests are vested." *Id.* at 6-7.

Walmart states that the percentage of ownership is not relevant and not mandated by any case law or definition; it notes that the definition of interest used in

Joint Municipal Electric Power Generation Act includes an undivided leasehold interest and provides precedent for the definition of owner to include an interest in a lease. *Id.* at 8-9.

Staff Initial Brief

Staff states that the General Assembly has limited the term "owner" to its commonly-defined meaning. It notes that in the other areas of the law referenced in Order No. 8, the inclusion of a leasehold as a part of ownership usually occurs because the statutory language expressly allows it. Staff Initial Brief at 1-3. Staff cites *U.S. v. Craft* to explain the complexity and interrelated nature of the various areas of law referenced by the Commission in Order No. 8 and to demonstrate the parameters of the property rights an individual may possess. Staff emphasizes that the U.S. Supreme Court looked to the relevant statutory language as the ultimate determinative factor. *Id.* at 3-4.

In response to Pulaski County, Staff explains that both the Joint Municipal Electric Power Generation Act and the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act have language that expressly states that a lessee is an owner for purposes of the respective acts. Staff remarks that Pulaski County confuses ownership interest with the phrase "property interest" used in eminent domain law, which simply entitles the holder to compensation but does not equate to an ownership interest. *Id.* at 5-6.

Staff states that Ark. Code Ann. § 23-18-603(5) does not include any limitations regarding percentages of ownership. It states that the Commission has provided guidance on this question in Order No. 4 in Docket No. 12-060-R, which found that

AREDA limits net-metering to single customers and not to customers jointly purchasing generating facilities for the purpose of offsetting the electricity requirements of more than one customer. Staff explains that a NMC may share ownership with other co-owners provided that the NMF is located behind a meter serving the NMC who will consume the energy generated by the facility and who will exclusively be credited with any Net Excess Generation from the facility. *Id.* at 6-7.

AECC Reply Brief

AECC notes that it and four other parties ask the Commission to strictly construe the language of Ark. Code Ann. § 23-18-603(5) while the remaining parties seek a broader interpretation of the language. It explains that Pulaski County offered a single statutory reference – Ark. Code Ann. § 23-18-602(a) and (c) – to support the position that the General Assembly intended the term owner to include a lessee but notes that the language does not equate to expanding the meaning of an existing, legally-recognized definition, *i.e.*, a "lessee" is not the same as an "owner." It notes that the General Assembly did not use the term lessee anywhere in AREDA. AECC Reply Brief at 1-2.

AECC opines that the General Assembly's intent is clear in regards to the term owner and states that the General Assembly is presumed to have known the finding in Order No. 7 of Docket No. 12-060-R and adopted that finding when it did not take any actions in Act 827 to address the finding. It states that the cases cited by Pulaski County are counter to the well-settled proposition that utility law is a creature of statute that must be strictly construed and that nothing may be taken that is not clearly expressed. AECC notes that none of the statutes referenced by Pulaski County are part of AREDA

and thus not evidence of the General Assembly's intent. It states that the Commission should not reinterpret owner or read into the statutes a meaning of owner that is not there. AECC states that, contrary to Pulaski County's assertion, the finding in *Smith v. Improvement Dist. of Texarkana* is that third party lessees are not owners. AECC notes that the case-by-case determination proposed by Pulaski County is of unknown origin, is not found in AREDA, would create an "unbearably burdensome process" for the Commission, utilities, and other parties, and would likely be litigious. *Id.* at 3-5.

Audubon Initial Brief

Audubon observes that five parties hold similar positions on the issue that a lessee should be considered an owner under AREDA. Audubon notes that Pulaski County and AAEA, Walmart, and Scenic Hill agree that the pertinent ownership interest is in the electricity produced. Audubon states that the finding from Docket No. 12-060-R should not be used to determine who qualifies as an owner because this docket differs in purpose from Docket No. 12-060-R and because this docket has provided a record on the issue while there is no record on the issue in Docket No. 12-060-R. Finally, Audubon quotes *Pension Benefit Guaranty Corporation v. LTV Corp.* to state that legislative inaction or failed legislation is a bad basis to rest an interpretation of a statute. Audubon Initial Brief at 1-4.

EAI Reply Brief

EAI states that Pulaski County and AAEA developed a new theory to support a lessee as qualifying as an owner and dismisses the theory by noting that it makes no appearance in the statute and that the theory is not grounded in pertinent legal authority. EAI Reply Brief at 3. EAI remarks that Pulaski County's and AAEA's

citations to the *Smith* case and the definitions of ownership from *Black's Law Dictionary* do not support the theory that a lessee has an ownership interest in a NMF. *Id*. at 2-4.

EAI notes that Audubon cites examples of "state metering laws" but claims that Audubon fails to convey if any of the statutes cited resemble AREDA or if any of those laws have been interpreted to find that leasing a solar PV system qualifies as an ownership interest. EAI says there is no case law to support Audubon's position that a lessee should be considered an owner because AREDA does not specifically prohibit lessees from being a NMC. EAI argues that the word "owner" in the statute is plain and unambiguous and thus should not be interpreted based on legislative intent, consistent with *Bennett v. Lonoke Bancshare, Inc. Id*. at 4-5.

OG&E Reply Brief

OG&E responds to Pulaski County's position to expand the word "owner" to include a lessee by noting that Arkansas law distinguishes between owning and leasing property, real and personal. OG&E remarks that the General Assembly uses the words own *and* lease in statutes when needed to reflect the intention to include both.

In response to Scenic Hill's invitation for the Commission to refer to prior decisions when determining if the term "owner" includes a lessee, OG&E invites the Commission to look at its finding in Docket No. 12-060-R, in which the Commission found that "owner" does not include a lessee. OG&E notes that the General Assembly has not changed the law since that Commission decision. OG&E Reply Brief at 1-5.

Pulaski County Reply Brief

Pulaski County seeks to employ net-metering, or some similar accounting

method, for a solar facility so Pulaski County may reduce its energy costs to benefit County taxpayers. Pulaski County seeks a ruling that individuals with a leasehold estate in a NMF meet the statutory definition of NMC so County residents can better utilize renewable resources as part of Pulaski County's Property Assessed Clean Energy (PACE) program or independently of the program. Pulaski County notes that a ruling from the Commission adopting its interpretation of owner will not remove the obstacles Pulaski County faces but would provide opportunities for County constituents to engage in conservation and renewable energy projects with or without the PACE program. Pulaski County Reply Brief at 1-3.

In response to AECC, Pulaski County argues that the issue addressed in Docket No. 12-060-R was in regard to third-party ownership and is distinguishable from the position Pulaski County takes in this docket. Pulaski County notes that the General Assembly would only be presumed to know that the Commission ruled in a rule-making proceeding that third-party ownership did not meet the definition of an owner of a NMF for purposes of AREDA and questions whether a finding in such a rulemaking docket would be binding precedent that must be followed. *Id.* at 3-5.

In response to Audubon's citation to the Louisiana Renewable Energy Development Act and Louisiana's administration of tax credits for distributed generation systems, Pulaski County remarks that the citation is compelling evidence supporting Pulaski County's contention that the General Assembly intended the broadest interpretation of owner, including a lessee. *Id.* at 5.

Scenic Hill Reply Brief

Scenic Hill reiterates the argument made by Pulaski County that including lessees

as owners meets the directive of Ark. Code Ann. § 1-2-202 that general provisions in statutes should be liberally construed to carry out the intention of the General Assembly. Scenic Hill remarks that the issues and circumstances before the Commission in this docket are different than those reviewed in Docket No. 12-060-R and as such applying *stare decisis* would be manifestly unjust. Scenic Hill claims that disallowing lease interests would be manifestly unjust as it would deny Arkansans the most popular means of accessing the benefits of renewable energy, which it points out AREDA is intended to promote. Scenic Hill Reply Brief at 1-3.

Scenic Hill agrees with Pulaski County that by not expressly delineating the parameters of the term "owner," AREDA incorporates the existing legal standards of ownership, which include the "bundle of rights" concept. Scenic Hill also agrees with Walmart that ownership includes legal and equitable interests in personal property and that an owner need only a partial right to possess, use, or convey property.

Scenic Hill disagrees with SWEPCO and AECC that the definition of owner from *Black's Law Dictionary* establishes that the term owner excludes lessee. Scenic Hill responds to SWEPCO, AECC, and OG&E by noting that the ruling in the *Smith* case is limited by the context of the specific section of the Arkansas Constitution. Scenic Hill agrees with Walmart that adding a definition of owner to the regulation would add clarity and certainty to AREDA. *Id.* at 3-5.

SWEPCO Reply Brief

SWEPCO asserts that an interpretation that the term owner includes lessee is an expansion of the term and not in conformity with the plain language of AREDA. SWEPCO provides citations to case law from various jurisdictions for its assertion that

an owner is an individual vested with dominion, ownership, or title of property, and does not include a person with a leasehold estate. SWEPCO agrees with Staff's comment that Pulaski County's examples are disingenuous and notes that two of the three examples given specifically allow for leases and lessees in the statutory language. SWEPCO Reply Brief at 1-3.

SWEPCO notes that AREDA does not include the term "lessee" and that this omission is the most persuasive evidence that the General Assembly did not intend the term "owner" to include a lessee. SWEPCO explains that there is no reason not to follow the precedent of Order No. 7 in Docket No. 12-060-R and notes that the General Assembly did not make any effort in Act 827 to address the Commission's prior ruling.

In response to parties who argue that that the statute allows for more than one owner, SWEPCO cites the *K-Mart Corp. v. Cartier, Inc.* case holding that a court should look at the particular language at issue and examine the language and design of the statute as a whole when interpreting the meaning of a statute. In this vein, SWEPCO argues that it is apparent from AREDA's use of the term NMC in the singular possessive that the Legislature intended for the owner of a NMF to have one-hundred percent interest in the NMF. *Id.* at 3-5.

Staff Reply Brief

Staff states that Audubon, Pulaski County, and AAEA, who argue that an owner includes a lessee under AREDA, ignore the plain language of the statute to advance their arguments. It counters the arguments made by Pulaski County, stating the language in AREDA is clear that the term owner does not include a lessee. Staff notes that the examples provided by AAEA and Pulaski County where the General Assembly has

recognized a lessee as an owner are statutes with language expressly allowing it. Staff Reply Brief at 1-2.

Staff describes as unhelpful Pulaski County and AAEA's citations to the statutes and cases of other states which include leaseholds as an ownership interest. Staff states that courts have interpreted the term "owner" in two ways: in the narrow sense of the legal owner; or in the broader sense of any person beneficially interested in property. Staff notes that state courts have applied a broader meaning only in limited areas such as liens, tenant for years in condemnation proceedings, and Article III standing for forfeiture cases.

In addressing the assertions of Pulaski County and AAEA that an interpretation of owner which includes a lessee is consistent with the intent of AREDA and Ark. Code Ann. § 1-2-202, Staff mentions again the plain meaning rule of statutory construction. Staff notes that the Commission has consistently used the term owner to mean full possessory interest in other regulations and further comments that the General Assembly is aware of this interpretation and has not acted to change it. Staff remarks that Walmart, Pulaski County, or AAEA have presented no evidence that inclusion of leasehold interests within the definition of owner will encourage net-metering. *Id*. at 2-4.

Commission Findings

The issue under this section of the NMRs is how the Commission should define NMC in the NMRs and whether the Commission should expand or interpret the definition of the term "owner" used in the statutory definition of NMC (Ark. Code Ann. § 23-18-603(5)), either through specific changes to the NMRs definition or through

holdings in this order. Two distinct questions have been raised concerning the interpretation of the term "owner" as used in the definition of NMC found at Ark. Code Ann. § 23-18-603(5) and consequently, what definition of NMC should be included in the NMR. The first question is whether the term owner should include an individual or entity with a leasehold interest. The second question is whether the term owner means a singular owner or allows for more than one owner under the definition of NMC.

First and foremost, the Commission must follow the rules of statutory construction:.

> When reviewing issues of statutory interpretation, we are mindful that the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Yamaha Motor Corp. v. Richard's Honda Yamaha,* 344 Ark. 44, 38 S.W.3d 356 (2001); *Dunklin v. Ramsay,* 328 Ark. 263, 944 S.W.2d 76 (1997). When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Burcham v. City of Van Buren,* 330 Ark. 451, 954 S.W.2d 266 (1997). A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *ACW, Inc. v. Weiss,* 329 Ark. 302, 947 S.W.2d 770 (1997). When a statute is clear, however, it is given its plain meaning, and this court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used. *Ford v. Keith,* 338 Ark. 487, 996 S.W.2d 20 (1999); *State v. McLeod,* 318 Ark. 781, 888 S.W.2d 639 (1994). This court is very hesitant to interpret a legislative act in a manner contrary to its express language, unless it is clear that a drafting error or omission has circumvented legislative intent. *Id.*

Cave City Nursing Home, Inc. v. Ark. Dept. of Human Services, 351 Ark. 13, 21–22, 89 S.W.3d 884, 889 (2002).[5]

The Commission finds that the plain meaning of the term owner does not include a person who holds a leasehold interest. The various definitions offered by the parties

[5] Although some parties urge the Commission to "liberally construe" the term "owner" under Ark. Code Ann. § 1-2-202, because the Commission finds that the term is unambiguous, it is not proper to construe the term beyond its plain meaning.

all recognize that there are different rights, titles, interests, and risks of owners as opposed to lessees. The Commission agrees with Staff that, as commonly used, the term owner means someone who legally possess something, compared to a lease or leasehold which is a contract by which a party conveys real estate, equipment, or facilities with specific terms and rent.[6] As noted by AECC, a lessee's rights are derivative of, and originate from, the owner.[7] In other words, the owner and the lessee are two separate entities and the plain meaning of owner does not include lessee.

This holding is consistent with the General Assembly's usage in other statutes. Although Pulaski County and other parties contend that the Joint Municipal Electric Power Generation Act and the Uniform Motor Vehicle Administration, Certificate of Title, and Antitheft Act include lessees as owners, opposing parties point out that these statutes have language that, unlike AREDA, expressly states that a lessee is considered an owner for purposes of the respective acts. Likewise, the concept of "property interest" in eminent domain law entitles the holder to compensation but does not equate to an ownership interest.

Further supporting this holding is the fact that parties such as Pulaski County, AAEA, and Scenic Hill admit that not all lessees qualify as owners under AREDA. Under their interpretation, the Commission could not merely revise the definition of NMC to include lessees, nor interpret the term owner to include lessee; a case-by-case determination would have to be made in each situation, which could create a burdensome process for the Commission, utilities, NMCs, and other parties.[8]

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[6] Citing http://www.merriam-webster.com/dictionary.
[7] *Bruns Foods of Morrilton, Inc. v. Hawkins*, 328 Ark. 416, 944 S.W.2d 509 (1997).
[8] In addition, AREDA requires a NMC to be an owner of the NMF, so any interest of a lessee in the electricity produced by a NMF does not equate to ownership interest in the NMF itself.

Moreover, the Commission's holding herein is consistent with its holding in Docket No. 12-060-R that a lessee is not a NMC for purposes of net-meter aggregation. The Commission further notes that subsequent to the Commission's decision in Docket No. 12-060-R, the General Assembly passed Act 827 of 2015 but did not change the statute or alter the Commission's holding. The Commission acknowledges the positions of various parties who contend that including a lessee as an owner may promote the policy goals of AREDA by expanding the use of renewable energy. However, the Commission is a creature of the General Assembly, with its power and authority limited to that which the legislature confers upon it.[9] While the General Assembly is certainly free to revise AREDA to allow NMCs to include lessees, at this time the Commission is bound by the plain language of AREDA and therefore finds that the term "owner" in the definition of NMC does not include lessees.

In regard to the second question, the Commission finds that the statutory definition of "net-metering customer," which means "an owner" of a net-metering facility, allows for multiple owners under certain circumstances. There is nothing in AREDA that prohibits more than one owner and no minimum percentage of ownership is prescribed by AREDA. The Commission further notes that the singular term "owner" may be interpreted to include the plural under Ark. Code Ann. § 1-2-203.[10] The Commission further agrees with Staff's position that the owner of the net metering

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[9] *Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n*, 354 Ark. 37, 49, 118 S.W.3d 109, 116 (2003).

[10] 1-2-203. Words importing number and gender.
(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.

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. Staff's discussion of this issue in response to Question 2 in Staff's Initial Brief is persuasive and well-reasoned. The Commission agrees that multiple owners are allowed under AREDA under the circumstances just described.

Although several parties raised issues in this Docket regarding community solar and virtual net metering, which may implicate the issue of multiple-party ownership of NMFs, the Commission will address those topics in Docket No. 16-028-U and nothing herein is intended as making any findings on those issues.

Finally, with regard to the NMR definition of NMC, in accordance with the Commission's directives *supra*, the Commission adopts a definition which references rather than repeats the statutory definition:

As defined in Ark. Code Ann. § 23-18-603(5).

(q) Net-Metering Facility

A facility for the production of electrical energy that:

A. Uses Solar, Wind, Hydroelectric, Geothermal, or Biomass resources to generate electricity including, but not limited to, Fuel Cells and Micro Turbines that generate electricity if the fuel source is entirely derived from renewable resources, or as otherwise allowed by the Commission under Ark. Code Ann. § 23-18-604(b)(4); and,

B. Has a generating capacity of not more than: ~~twenty-five (25) kilowatts for residential use or three hundred (300) kilowatts for any other use; and~~,

1. the greater of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the Net-Metering Customer's highest monthly usage in the previous twelve (12) months for Residential Use;

   or

2. three hundred kilowatts (300 kW) for any other use unless otherwise allowed by a Commission under Ark. Code Ann. § 23-18-604(b)(5) and (7); and,

C. Is located in Arkansas; and,

D. Can operate in parallel with an Electric Utility's existing transmission and distribution facilities; and,

E. Is intended primarily to offset part or all of the Net-Metering Customer requirements for electricity.~~; or,~~

~~F. Is designated by the Commission as eligible for net metering service pursuant to Ark. Code Ann. 23-18-604(b)(4).~~

Commission Findings

With reference to the Parties' proposals to limit the size of NMF, please see the discussion and findings *infra*. Otherwise, the Commission adopts a definition which references rather than repeats the statutory definition:

As defined in Ark. Code Ann. § 23-18-603(6).

(r) Parallel Operation
The operation of on-site generation by a customer while the customer is connected to the Electric Utility's distribution system.

Pulaski County Reply Comments

Pulaski County suggests the following modification to the definition of Parallel Operation:

> The operation of on-site generation by a ~~customer~~ Net-Metering Customer's Net-Metering Facility while the customer is connected to the Electric Utility's distribution system.

Pulaski County Reply at 4.

Staff Surreply Comments

Staff does not recommend changing this definition, noting that since it only applies to net-metering, it is clear that it refers to the operation by a NMC of a NMF and, therefore, the clarification is not necessary. Staff Surreply at 15.

Commission Findings

The Commission finds that further clarification is not needed and thus accepts Staff's definition of Parallel Operation.

(s) Qualifying Facility

A cogeneration facility or a small power production facility that is a qualifying facility under Section 2 of the Commission's Cogeneration Rules.

Commission Findings

As discussed above in reference to the definition of Avoided Cost, the Commission adopts a definition which references rather than repeats the statutory definition of "Qualifying Facility":

As defined in Ark. Code Ann. § 23-3-702(4).

(t) Renewable Energy Credit
The environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour generated from renewable fuels that can be sold or traded separately.

(No contested issues)

(u) Residential Use ~~customer~~
~~A customer served~~ Service provided under ~~a utility's~~an Electric Utility's standard rate schedules applicable to residential service.

Pulaski County Reply Comments

Pulaski County suggests modifying Staff's definition of Residential Use as follows:

> Service provided under an Electric Utility's ~~utility's~~ standard rate schedules applicable to residential service for a Net-Metering customer.

Pulaski County Reply at 4.

Staff Surreply Comments

Staff agrees to replace the term "utility" with the defined term "Electric Utility" but states that the phrase "for a Net-Metering Customer" is not necessary since the term "Residential Use" as used in the definition of NMF already references the NMC. Staff Surreply at 15-16.

Commission Findings

The Commission agrees with Staff and accepts Staff's definition of Residential Use.

(v) Solar Resourcefacility
A facilityresource in which electricity is generated through the collection, transfer and/or storage of the sun's heat or light.

(No contested issues)

(w) Wind Resourcefacility
A facility resource in which an electric generator is powered by a wind-driven turbine.

(No contested issues)

Rule 1.02 Purpose

The purpose of these Net-Metering Rules is to establish rules for net energy metering and interconnection.

(No contested issues)

Rule 1.03 Statutory Provisions

A. These Rules are developed pursuant to the Arkansas Renewable Energy Development Act of 2001 (A.C.A.Ark. Code Ann. § 23-18-603 and § 23-18-604 as amended by Act 1024 of 2007 and Act 827 of 2015.)

B. These Rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304(3), and 23-2-305.

C. Nothing in these Rules shall govern, limit, or restrict the Commission's authority under Ark. Code Ann. § 23-18-604.

Commission Findings

The Commission finds that the parenthetical statutory reference to AREDA should be revised as follows for a more accurate reference:

(Ark. Code Ann. §§ 23-18-601 *et seq.*, as amended).

Rule 1.04 Other Provisions

A. These Rules apply to all Electric Utilities, as defined in these Rules, thatwhich

are jurisdictional to the Commission.

B. The Net-Metering Rules are not intended to, and do not affect or replace any Commission approved general service regulation, policy, procedure, rule, or service application of any utility which addresses items other than those covered in these Rules.

C. Net-Metering Customers taking service under the provisions of the Net-Metering Tariff may not simultaneously take service under the provisions of any other alternative source generation or cogeneration tariffs except as provided herein.

(No contested issues)

SECTION 2. NET-METERING REQUIREMENTS

Rule 2.01 Electric Utility Requirements

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.

(No contested issues)

Rule 2.02 Metering Requirements

A. Metering equipment shall be installed to both accurately measure the electricity supplied by the Electric Utility to each Net-Metering Customer and also to accurately measure the electricity generated by each Net-Metering Customer that is fed back to the Electric Utility over the applicable Billing Period. If nonstandard metering equipment is required, the customer is responsible for the cost differential between the required metering equipment and the utility's standard metering equipment for the customer's current rate schedule.

Costner Reply Comments

Ms. Costner recommends that this rule be revised to require utilities to prepare estimates of all metering equipment costs, to be updated annually, and to make such estimates publicly available by, for example, posting on their websites. Costner Reply at 12.

Staff Surreply Comments

Staff disagrees with Ms. Costner, recommending that the language of Rule 2.02 not be revised to require utilities to prepare estimates of metering equipment costs, as this issue is already addressed by Rule 2.04.A, which requires that any new or additional charge that would increase a NMC's costs beyond those of other customers in the rate class shall be filed by the Electric Utility with the Commission for approval. Staff notes that such a fee or charge filed with and approved by the Commission would be included in the utility's tariffs that are published on the Commission's website. Staff Surreply at 16.

Commission Findings

The Commission accepts Staff's rationale and recommendation as reasonable and in the public interest and approves the proposed Metering Requirement in Rule 2.02.A.[11]

> B. Accuracy requirements for a meter operating in both forward and reverse registration modes shall be as defined in the Commission's Special Rules - Electric. A test to determine compliance with this accuracy requirement shall be made by the Electric Utility either before or at the time the Net-Metering Facility is placed in operation in accordance with these Rules.

(No contested issues)

Rule 2.03 Cost to Provide Service

Following notice and opportunity for public comment, the Commission shall establish appropriate rates, terms, and conditions for Net-Metering contracts including the requirement that the rates charged to each Net-Metering Customer recover the Electric Utility's entire cost of providing service to each Net-Metering Customer within each of the Electric Utility's class of customers. The Electric Utility's entire cost of providing service to each Net-Metering Customer within each of the Electric Utility's class of

[11] Although this rule repeats Ark. Code Ann. § 23-18-604(b)(1)(B), it is retained in the NMRs as AREDA directs the Commission to require this of a utility. *See also*, proposed Rule 2.05.D (renumbered as 2.04.C) (Ark. Code Ann. § 23-18-604(b)(3)), proposed Rule 2.05.D.3 (renumbered as 2.04.C.3) (Ark. Code Ann. § 23-18-604(b)(6)(A)), and proposed Rule 2.05.F (renumbered as 2.04.E) (Ark. Code Ann. § 23-18-604(b)(6)(B)).

customers:

1. includes without limitation any quantifiable additional cost associated with the Net-Metering Customer's use of the Electric Utility's capacity, distribution system, or transmission system and any effect on the Electric Utility's reliability; and

2. is net of any quantifiable benefits associated with the interconnection with and providing service to the Net-Metering Customer, including without limitation benefits to the Electric Utility's capacity, reliability, distribution system, or transmission system.

Costner Reply Comments

Ms. Costner recommends replacing the term "entire cost" with the term "avoided cost." Costner Reply at 5.

AAEA Reply Comments

AAEA proposes changing the name of the heading of Rule 2.03 from "Cost of Service" to "Cost and Benefit Analysis of Providing Service." AAEA also suggests adding the language "net of benefits" to the statutory language incorporated in this Rule. AAEA Reply at 5.

Staff Surreply Comments

Staff recommends against making Ms. Costner's change because the term "entire cost" is consistent with Act 827.

Staff does not recommend changing the name of the heading, noting that the heading is "Cost to Provide Service" rather than "Cost of Service," and adding that the Rule as drafted is more consistent with the statutory language, which does not include the language "Cost and Benefit Analysis." Staff also notes that the language "net of benefits" is not included in Act 827 and thus does not recommend adding it to the Rule, stating that Rule 2.03.2 appropriately recognizes that the rate will be net of quantifiable

benefits. Staff Surreply at 17.

Commission Findings

The Commission finds that this proposed rule merely repeats Ark. Code Ann. § 23-18-604(b)(1) and is a statutory directive requiring the Commission to take certain action. The NMRs contain directives to utilities and NMCs. Therefore, this statutory directive to the Commission is not appropriate to include in the NMRs. The Commission rejects the inclusion of this proposed rule.

Rule 2.04 New or Additional Charges

A. Any new or additional charge that would increase a Net-Metering Customer's costs beyond those of other customers in the rate class shall be filed by the Electric Utility with the Commission for approval. The filing shall be supported by the cost/benefit analysis described in Rule 2.0~~3~~4.B.
B. Following notice and opportunity for public comment, the Commission may authorize an Electric Utility to assess a Net-–Metering Customer a greater fee or charge, of any type, if the Electric Utility's direct costs of interconnection and administration of Net-Metering outweigh the distribution system, environmental and public policy benefits of allocating the costs among the Electric Utility's entire customer base.

AAEA Reply Comments

AAEA proposes changing the name of the heading of Rule 2.04 from "New or Additional Charges" to "Additional Charges or Compensation." In addition, AAEA proposes to add the following language to the end of Rule 2.04.B:

> Likewise, should such cost/benefit analysis show that the benefits of Net-Metering exceed costs, the Commission may authorize an Electric Utility to compensate monetarily the Net-Metering Customer.

AAEA Reply at 5.

Pulaski County Reply Comments

Pulaski County proposes amending Rule 2.04.B. to read as follows:

> Following notice and opportunity for public comment, the Commission may authorize an Electric Utility to assess a Net-Metering Customer a greater fee or charge, of any type, only upon ~~if~~ the Electric Utility's providing clear and convincing evidence, based on quantifiable evidence, that the direct additional costs of interconnection and the Electric Utility's administration of Net-Metering outweigh the distribution system, environmental and public policy benefits of allocating the costs among the Electric Utility's entire customer base.

Staff Surreply Comments

Staff recommends against incorporating either of AAEA's proposed changes, on the basis that both are inconsistent with Act 827. Staff notes that Rule 2.04 addresses the direct costs of interconnection and administration of the NMF and that under the statute there are no payments or compensation to the NMC. Staff Surreply at 18.

Staff does not recommend incorporating Pulaski County's proposed changes because they are not consistent with Act 827. Staff Surreply at 18.

Commission Findings

The Commission agrees with Staff that AREDA makes no provision for additional payments or compensation to NMCs beyond the net of kWh and terms for Net Excess Generation Credits. To the extent AAEA's proposal is tied to the rate issues deferred to Phase 2, those issues will be addressed in Phase 2. The Commission finds Staff's draft of Rule 2.04 to be reasonable and in the public interest with the changes noted below.

The Commission agrees with Staff's rationale and recommendation to reject Pulaski County's proposed language. The Commission notes further that the rules of evidence do not strictly apply in Commission proceedings (RPP Rule 4.08) and the Commission generally operates under a preponderance of evidence standard. *See*, *e.g.*, RPP Rule 4.04(b)(2).

The Commission further notes that subsection B merely repeats Ark. Code Ann. §

23-18-604(b)(2) and is not required in the rules. The Commission therefore deletes subsection B and revises the reference in (former) subsection A to the applicable statute:

Rule **2.03** New or Additional Charges

> Any new or additional charge that would increase a Net-Metering Customer's costs beyond those of other customers in the rate class shall be filed by the Electric Utility with the Commission for approval. The filing shall be supported by the cost/benefit analysis described in **Ark. Code Ann. § 23-18-604(b)(2)~~Rule 2.03.B~~.**

Rule ~~2.04~~2.05 Billing for Net-Metering

A. The Electric Utility shall separately meter, bill, and credit each Net-Metering Facility even if one (1) or more Net-Metering Facilities are under common ownership.

Commission Findings

The Commission notes that this proposed addition in subsection A merely repeats Ark. Code Ann. § 23-18-604(d) and thus deletes it from the NMRs. The remaining subsections will retain their original designation.

B.~~A~~. On a monthly basis, the Net-Metering Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider schedules. Under Net-Metering, only the kilowatt hour (kWh) units of a customer's bill are ~~affected~~netted.

(No contested issues)

C.~~B~~. If the kWhs supplied by the Electric Utility exceeds the kWhs generated by the Net- Metering Facility and fed back to the Electric Utility during the Billing Period, the Net–Metering Customer shall be billed for the net kWhs supplied by the Electric Utility in accordance with the rates and charges under the customer's standard rate schedule.

Costner Reply Comments

Ms. Costner recommends revising the language in Rule 2.05.C and 2.05.D to replace the phrase "fed back" with the word "supplied," explaining that the term "fed back" implies a circuit or loop configuration rather than the configuration

where each of the two entities generates and/or procures electricity and supplies it to the other. Costner Reply at 7.

Staff Surreply Comments

Staff recommends against replacing the phrase "fed back" with the word "supplied" because the term "fed back" is consistent with the statutory definition of Net-Metering. Staff Surreply at 19.

Commission Findings

On the basis that the statute uses the term "fed back," the Commission adopts Staff's recommendation.

D.~~C.~~ If the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility exceed 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.

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~~Generation Meter~~)~~.

2. After application of subdivision ~~(C~~D.~~)(~~1~~)~~ and upon request of the Net-Metering Customer pursuant to subsection ~~(D~~E.~~)~~, 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~~D)(1) and (~~C~~D)(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.~~ Net Excess Generation credit remaining in a Net-Metering Customer's account at the close of a Billing Period shall not expire and shall be carried forward to subsequent Billing Periods indefinitely.

   a. For Net Excess Generation credits older than 24 months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation credits in the Net-Metering Customer's account at the Electric

Utility's estimated annual average Avoided Cost rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least $100

b. An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation credit remaining in a Net-Metering Customer's account when the Net-Metering Customer:

i. ceases to be a customer of the Electric Utility;

ii. ceases to operate the Net-Metering Facility; or

iii. transfers the Net-Metering Facility to another person.

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.~~When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on is annual average avoided energy costs in the applicable Regional Transmission Organization for the current year.

Audubon Initial Comments

In conformity with Audubon's recommendation to eliminate the definition of "Net Excess Generation Credit," Audubon recommends eliminating the term "credit" from Rule 2.05. Audubon Initial at 11-12. Audubon recommends clarifying whether, when a utility purchases Net Excess Generation from an NMC, it should base payments upon its annual average Avoided Cost from the current year or its average Avoided Cost from the year in which the Net Excess Generation was fed into the grid. Audubon Initial at 17.

Staff Surreply Comments

In conformity with Staff's rejection of the elimination of the definition of Net Excess Generation Credit, Staff recommends retaining the term "credit," which is included in Act 827, within the Rule. For administrative efficiency, Staff recommends that payment should be based upon avoided costs from the current

year. Staff Surreply at 19.

Commission Findings

On the basis that the statute clearly and repeatedly uses the term "credit," the Commission adopts Staff's recommendation to retain the term in the Rule. The Commission adopts Staff's rationale and recommended solution on avoided costs, as reflected in its proposed language for this subsection. The Commission further corrects a typographical error (changing "is" to "its" in the phrase "...based on **its** annual average....") and adds the clarification that "current year" means "current **calendar** year."

> 5. If, after a 12-month Billing Cycle, it is found that a Net-Metering Customer generates Net Excess Generation Credits in each month of the 12-month Billing Cycle, the Electric Utility shall notify the Net-Metering Customer, in writing, that the Net Metering Facility is being operated in violation of state law and the Commission's Net Metering Rules. The Net-Metering Customer shall be given six monthly Billing Cycles to correct the violation. If, at the end of the six monthly Billing Cycles it is found that the Net-Metering Customer has generated Net Excess Generation Credits in each month of the six monthly Billing Cycles, the Electric Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.

AECC Reply Comments

AECC proposes that if, after a 12-month Billing Cycle, an NMC's excess credits are "materially greater" than the NMC's consumption in each month of the 12-month cycle, a utility can terminate the NMC's Interconnection Agreement and cease net-metering service until such time as the NMF's generation is reduced to comply with Ark. Code Ann. § 23-18-603(6)E. AECC Reply at 12. This code section is part of the definition of "Net-Metering Facility," and provides that the NMF "[i]s intended primarily to offset part or all of the net-metering customer requirements for electricity." AECC proposes this language in order to guard against changes in the nature of an NMC's business or aggregated

accounts that could result in the NMF generating in excess of the NMC's requirements for electricity. AECC asserts that an NMC that consistently generates in excess of its requirements for electricity is ineligible for NM service under the statute. *Id.*

Staff Surreply Comments

Staff recommends instead that, if an NMC has Net Excess Generation Credits in each month of the 12-month Billing Cycle, the utility shall notify the NMC in writing that the NMC is violating state law and the Commission's NMRs. Staff Surreply at 20. Under Staff's proposed Rule 2.05.D.5, the NMC would then be given six months to correct the violation and otherwise the utility could suspend electric service pursuant to Section 6 of the Commission's GSRs. *Id.* at 20-21. Staff notes that the GSRs allow a utility to suspend service for violating the utility's rules regarding the operation of nonstandard equipment or unauthorized attachments, after notice and a reasonable opportunity to comply. The GSRs also allow suspension of service for violation of federal, state, or local laws or regulations through the use of the service. *Id.*

Public Hearing Testimony of AECC

At the public hearing, Mr. Shields, for AECC, testified that AECC does not favor Staff's approach. T. 751. He stated that cooperatives would not want to turn off one of their members' power, but instead want to stop crediting Net Excess Generation. *Id.* When asked whether AREDA's provision requiring utilities to pay an NMC, at the customer's discretion, for Net Excess Generation remaining after two or more years, Mr. Shields indicated that AECC's proposal doesn't prohibit such payment. He explained that an NMC could still cash out credits after two years, but that if the NMC generates Net Excess in every month continually for 12 months, the NMF is greatly oversized. T. 752.

Public Hearing Testimony of Ball, Halter, Kelly, the AG, and Costner

Mr. Ball, Mr. Halter, and Mr. Kelly each opine that intentional oversizing of NMFs is not a problem because no customer would invest additional capital to overbuild for the purpose of selling Net Excess Generation at the utility's avoided cost. Ball Surreply at 4; Halter, T. 547; Kelly, T. 551. Mr. Volkmann, for the AG, agrees, testifying regarding this termination provision that "[l]ike other parties, I think it's unnecessary." Mr. Halter also posits an example where a retired NMC leaves the state to visit grandchildren for six months. He states that it would be bad policy to turn off the NMF rather than to allow the facilities to generate energy for society at net zero cost. He states that customers should not be dis-incentivized from investing in renewable energy or placed into doubt by a termination policy. T. 547.

Ms. Costner comments at the public hearing that she invested $30,000 in her system, which includes solar panels and battery storage adequate for her to operate off-grid. T. 449. She states that she invested in the system in part in planning for retirement and that she now lives on a fixed income, so that changes in NM compensation could cause her expenses to exceed her monthly income. T. 432. She states that AECC's proposal would eliminate her as an NMC because she has invested in efficient household appliances and that it is "almost a competition, a game for me to stay within what my system generates, and I have achieved that in five of the last six years." T. 433. Ms. Costner notes that her investments (in efficient equipment) result in her daily usage being 12 kWh, rather than the Arkansas average of 35 kWh. T. 442. She relates that during the past six years, she paid her utility about $800 to remain connected and returned about 400 free net excess kWh per year to the utility. T. 450.

Public Hearing Testimony of Staff

Also at the public hearing, Ms. Brenske, for Staff, emphasizes by way of clarification that Staff's proposal terminates service only after a customer over-generates in every single month, which she said is not allowed under the statute. T. 1242. She states that the statutory scheme comprehends that in the summertime the NMC will generate more than needed, with credits used in other periods, but that the NMC would not generate excess in every single month. T. 1244.

When asked if Ms. Costner's situation would be disallowed, Ms. Brenske states that, if Ms. Costner regulates her usage very carefully so that at the end of the year she would not have used any kWh from the utility then that should be perfectly fine because she would have met all her needs from her system. T. 1242-1243. She also testifies that Staff is concerned that the AECC approach, under which NM service would be terminated for overproduction, would involve the NMC providing value to the utility without compensation. T. 1244.

Commission Findings

The Commission finds that the evidence of record does not indicate that customers have an incentive to purposefully invest in oversized NMFs. The record also shows that decisions unrelated to intentional oversizing – such as extended travel by a customer or careful energy management – might trigger customer penalties under either AECC's or Staff's proposals. The Commission notes that business customers might appropriately size a NMF and then experience a downturn, inadvertently leading to over-production.

Within the context of these factual findings, a rule that penalizes customer overproduction as a means of enforcing the rule that NMFs primarily serve part or all of a

customer's requirements for electricity may run afoul of AREDA. AREDA does not explicitly prohibit monthly overproduction for the period of a year (although that is not necessarily an unreasonable measure of oversizing).

Rather, the General Assembly, through Act 827, has recently amended AREDA to provide that "[t]he net excess generation credit remaining in a NMC's account at the close of a billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely." Ark. Code Ann. § 23-18-604(b)(6)(i) (emphasis added). The General Assembly has extended significant protection to the customer's right to indefinite accumulation and rollover of credits.

In the case of such over-production, the new amendments to AREDA further provide an explicit right, at the customer's discretion, for the customer to receive payment for Net Excess Generation Credits older than twenty-four months:

> However, for net excess generation credits older than twenty-four (24) months, a net-metering customer may elect to have the electric utility purchase the net excess generation credits in the net-metering customer's account at the electric utility's estimated annual average avoided cost rate for wholesale energy if the sum to be paid to the net-metering customer is at least one hundred dollars.

Ark. Code Ann. § 23-18-604(b)(6)(ii). AREDA — a statute aimed at promoting renewable generation — does not mention terminating customer electricity service as a penalty for Net Excess Generation and explicitly contemplates that an NMC with Net Excess Generation older than twenty-four months may choose to be compensated with avoided cost payments, or to continue accruing more credits.

The Commission also is concerned that it may be administratively inefficient and lead to unjust results to track and determine whether and why a customer has overproduced — potentially rewarding one NMC who has overproduced eleven months

out of the year with avoided cost payments, but penalizing another that overproduces for twelve.

The Commission does not discount the need to properly implement AREDA's definition of NMF as a facility that is "intended" primarily to offset part or all of the NMC's requirements. Ark. Code Ann. § 23-18-603(6)(E) (emphasis added). The Commission finds, however, that rather than strictly prohibiting overproduction, this provision of AREDA looks to the customer's intent in sizing the NMF, which may be reasonably discerned by comparing the customer's usage with the size of the intended NMF, at the time the facility is installed and the Interconnection Agreement is signed.

Further, by providing that the NMF should be sized "primarily" to offset part or all of the NMC's requirements, AREDA allows a reasonable estimate of expected size requirements, but does not contemplate strict policing of the customer's behavior thereafter. The Commission does not hereby exclude the consideration of evidence of intentional oversizing in specific cases, if such arise, or should conditions change in a way that makes avoided cost payment an inducement to oversizing.

In keeping with this reasoning, the Commission does not adopt the termination provisions of either AECC or Staff and finds that, as with the sizing of larger systems, the interconnection process is the right place to make a reasonable decision as to whether a NMF is intended primarily to offset part or all of the NMC's requirements. If there is a later dispute between the utility and the NMC about the size of the systems and whether it meets the statutory definition of a NMF, the Commission has processes in place to resolve such disputes. Accordingly, the Commission strikes proposed Rule 2.05.D.5.

E. Upon request from a Net-Metering Customer an Electric Utility must apply Net

Excess Generation credits to the Net-Metering Customer's Additional Meters provided that:

1. The Net-Metering Customer must give at least 30 days' notice to the Electric Utility of its request to apply Net Excess Generation to the Additional Meter(s).

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 Additional Meters is identified, the Net-Metering Customer must designate the rank order for the Additional Meters to which Net Excess Generation ~~kWhs are~~ is 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.~~

F. 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 Energy Credit.

(No contested issues)

Rule 2.06 Application to Exceed Generating Capacity Limit

A. A ~~non-residential~~Net-Metering Customer shall file an application with the Commission ~~for~~seeking approval to install a Net-Metering Facility with a generating capacity of more than 300 kW for non-residential use under Ark. Code Ann. §§ 23-18-604(b) (5) and (7).

B. The application shall be filed in conformance with Section 3 of the Commission's *Rules of Practice and Procedure* and shall, at a minimum, include supporting testimony, exhibits, or other documentation including:

1. Evidence ~~supporting and substantiating how~~that the Net-Metering Facility in excess of 300 kW satisfies the requirements of Ark. Code Ann. §§ 23-18-604(b)(5) and (7)~~.~~:

2. A description of the proposed Net-Metering Facility including:

a. Project proposal;

b. Project location (street address, town, utility service area);

c. Generator type (wind, solar, hydro, etc.);

d. Generator rating in kW (DC or AC);

e. Capacity factor;

f. Point of interconnection with the Electric Utility;

g. Single Phase or Three Phase interconnection;

h. Planned method of interconnection consistent with Rule 3.01.B.;

i. Expected ~~system~~facility ~~output and~~performance ~~of the facility~~ calculated using an industry recognized simulation model (PVWatts, etc.);

3. Evidence that the electrical energy produced by the Net-Metering Facility will not exceed the amount necessary to offset part or all of the Net- Metering Customer requirements for electricity in the form of:

   a. The monthly electric bills for the 12 months prior to the application for the ~~Designated~~Generation Meter and Additional Meter(s), if any, to be credited with Net Excess Generation ~~to substantiate that the electrical energy produced by the Net-Metering Facility will not exceed the amount necessary to offset part or all of the Net-Metering Customer requirements for electricity.~~ or

   b. In the absence of historical data, reasonable estimates for the class and character of service may be made; and

4. A copy of the Preliminary Interconnection Review Request submitted to the Electric Utility and the results of the utility's interconnection site review conducted pursuant to Rule 3.03.

Staff Initial Comments

Staff states that a NMF in excess of 300 kW may present greater interconnection, operational, and other issues depending upon the size, location, and operating characteristics of the facility than smaller non-residential facilities. Staff notes that the primary limit on a NMF is offsetting all or part of the NMC's load in the utility's service area. Staff comments that each net-metering system is unique and may uniquely affect the state's ability to attract businesses to Arkansas and those effects will be affected by the size, location, and operating characteristics of each facility. Staff does not

recommend establishing varying size categories at this time and recommends adoption of its proposed Rule 2.06 as guidelines for filing an application to exceed the 300 kW limit. Staff Initial Comments, Attachments at 64-65.

AAEA Reply Comments

AAEA believes that size restrictions are arbitrary for non-residential NMFs and that developments over recent years show environmental and public policy benefits for NMFs. AAEA is unaware of any reasons based on physics or engineering that require an upper limit to the size of NMFs and sees no reason for NMF size limits. AAEA concurs with Staff's proposed guidelines. AAEA Reply Comments at 6-8.

AECC Reply Comments

AECC submits that the Commission should provide a maximum threshold of 1 MW on NMFs to prevent a circumvention of PURPA and to avoid issues such as line congestion, reliability, and other negative effects on the utility's ability to adequately forecast load. AECC Reply Comments at 5-6.

AEEC Reply Comments

On behalf of AEEC, Bradley G. Mullins testifies that the circumstances in which the Commission should designate a generation resource in excess of 300 kW as a NMF depend largely on the outcome of the ratemaking portion of this proceeding; he recommends that the Commission initially maintain a relatively high standard for designating facilities larger than 300 kW as a NMFs. Mullins Direct at 3. He states that approving a large project in excess of 300 kW as a NMF should not be problematic, as long as the rates paid by the NMF do not allow a customer to avoid its fair allocation of the host Electric Utility's fixed cost nor allow the customer to avoid paying for cost-

based stand-by and back-up services. *Id.* at 4-5. He testifies that the benefits from small and large NMFs are similar although the economics of installing them are not. He notes that the Commission should perform a case-by-case review to determine whether a customer would locate its business in Arkansas but for the NMF. *Id.* at 5-6. He advocates treating large and small NMFs differently, observing that it is often not necessary to treat large generation projects as a NMF. *Id.* at 6-7.

AG Reply Comments

On behalf of the AG, Curt Volkmann testifies that large projects provide distribution system, environmental, and public policy benefits and that large employers increasingly favor access to renewable energy when locating facilities. He suggests that the Commission adopt policies that increase access to large-scale corporate renewable energy. Volkmann Direct at 13-16.

Audubon Initial Comments

Audubon comments that larger scale projects represent an important market opportunity for solar developers to offer energy savings to customers. Audubon Initial Comments at 2. Audubon states that such systems provide significant environmental and public policy benefits and that allowing large facilities in a predictable and reliable manner can only increase the state's ability to attract business. *Id.* at 2-4. Audubon does not support a limit on the size of NMFs and states the limits should be set according to the purpose of the proposed system and 125% of the maximum customer load. It believes individual physical or engineering concerns can be addressed in the interconnection process, using the Interstate Renewable Energy Council model rules. *Id.* at 4-6.

Finally, Audubon recommends several clarifying modifications to Staff's proposed Rule 2.06. *Id.* at 13-14.

Contreras Reply Comments

Mr. Contreras states that projects exceeding 300 kW present significant environmental benefits and significant opportunities for businesses and community solar. Contreras Reply Comments at 3-5. He sees no reason for an upper size limit. *Id.* at 6.

Empire Reply Comments

Empire comments that setting proper limits upon customer generation capacity is critical to minimizing risk of subsidization and maintaining a reliable electric system, with systems sized to be no larger than the load of the customer at the location. Empire states that it is unlikely that a NMF over 300 kW would provide a system benefit. Empire Reply Comments at 2.

EAI Reply Comments

EAI proposes to establish a maximum generation capacity for Net-Metering Facilities at 1 MW. EAI Reply at 10. EAI agrees with Staff that a NMF in excess of 300 kW may present greater interconnection, operational, and other issues depending upon the size, location, and operating characteristics of the facility than smaller non-residential facilities and points out that cost-shifting is possible. *Id.* at 18. EAI agrees with Staff's comments on assessing benefits . *Id.* at 18-19. EAI suggests a maximum cap of 1 MW as large facilities are likely to present more complex and significant interconnection, operational, or other issues. *Id.* at 20.

OG&E Reply Comments

OG&E recognizes that each NMF in excess of 300 kW will present varying interconnection, operational, and other issues depending upon the size, location, and operating characteristics of the facility, as compared with smaller non-residential facilities. OG&E agrees with Staff's comments on assessing benefits. Reply Comments at 3. OG&E believes there should be an upper limit on NMF size due to the operational limitations of each distribution circuit, but the limit is case-dependent. OG&E concurs with Staff's recommendation that Rule 2.06 be adopted as it addresses guidelines for an application. *Id.* at 4.

Pulaski County Reply Comments

Pulaski County cannot envision any significant concerns that would arise from projects exceeding 300 kW so long as proper interconnection is facilitated. Pulaski County Comments to Questions at 2. Pulaski County details how the facilities provide distribution system, environmental, and economic benefits and offers two ways for the Commission to assess whether such facilities increase the state's ability to attract businesses. *Id.* at 4-9. Pulaski County suggests an absolute cap of two and one-half to five MW. *Id.* at 11.

Scenic Hill Reply Comments

Scenic Hill comments that NMFs over 300 kW provides large opportunities for customers to select power generation methods that they prefer and usually at significant cost savings, that AREDA recognizes benefits of NMFs, and that experiences with a cap of 1 MW or 5 MW in other states have been positive. Scenic Hill Reply Comments at 5.

Sierra Reply Comments

Sierra comments that larger NMFs can offset larger loads and provide the

potential for more distribution and generation savings and benefits, including local economic development and jobs. Sierra Reply Comments at 3-4. Sierra states that the improvements to the business environment are so evident that Sierra recommends that the Commission make a general finding that net-metering of solar systems that are 300 kilowatts or greater increases the state's ability to attract businesses. Instead of capping the size, Sierra recommends that impacts to the grid be dealt with through the interconnection process. *Id.* at 4. Sierra notes that clear guidelines about regulatory treatment are important to promote net-metering. *Id.* at 5.

Solar Energy Arkansas Initial Comments

SEA comments that large distributed solar projects provide benefits of energy cost savings due to economies of scale and decreased load on distribution facilities. SEA opines that the size should not have an upper limit but be determined on a case-by-case basis based on the capacity of the distribution system to handle integration and the maximum size of the customer load, commonly set at 125% of maximum load. SEA Initial Comments at 2-3.

SWEPCO Reply Comments

SWEPCO comments that it seems reasonable to set an upper limit of 1 MW on the size of NMFs to preserve the intent of limiting NM to small consumers. SWEPCO Reply Comments at 5. SWEPCO states that large NMFs present several concerns that make them different from smaller non-residential facilities and could impact transmission and distribution system reliability and congestion, which should be evaluated on a case-by-case basis. *Id.* at 7-8. SWEPCO opines that anything larger than 1 MW would not reasonably meet the statutory criteria of a small consumer and should

operate under the Commission's *Cogeneration Rules*. *Id.* at 9. SWEPCO says that costs and benefits of NMFs must be determined based on the books and records of the utility and that assessment of the ability to attract business should include the individual and unique attributes of the specific NMF. *Id.* at 9-10. Because of engineering and reliability issues, SWEPCO states that the Commission should consider potential impacts from a SPP transmission planning perspective and interconnection when determining a maximum size. *Id.* at 12. SWEPCO agrees with Staff's proposed Rule 2.06. *Id.* at 13.

Walmart Reply Comments

Walmart comments that larger NMFs provide economies of scale, higher efficiency (capacity factors), and lower O&M per kW. In assessing whether NMFs increase the state's ability to attract businesses, Walmart recommends referring the issue to the Arkansas Department of Economic Development. Walmart Reply Comments to Order No. 1 at 10. With regard to a maximum size, Walmart states there may be localized reasons that reasonably dictate an upper limit, based on constraints of system planning or physical characteristics of the distribution system, and that the relationship between the customer load and the capacity of the NMF will ordinarily dictate an upper limit. *Id.* at 11.

Staff Surreply Comments

Staff states that based on its response to the proposed 1 MW limit to the definition of NMF, it does not recommend revising the statutory definition of NMF to establish an upper limit for NMFs, noting that the statutory definition limits the size of a NMF to the customer's kWhs eligible for netting within the utility's service territory,

which effectively establishes a cap. Staff Surreply at 22. With modest exceptions, Staff agrees with Audubon's modifications (indicated in yellow highlights above). Staff notes that a NMF of more than 300 kW may only be installed pursuant to Commission approval, which may only be obtained by filing an application with the Commission. *Id.* at 22-23.

Staff continues to believe that each NMF is unique, with unique potential benefits, and that the Commission should examine each NMF to determine if it meets the statutory requirements to exceed 300 kW. *Id.* at 56-57. Staff does not recommend that the Commission establish an upper limit for NMFs based on grid characteristics at this time but states that the Commission should examine each application to see if it meets the statutory requirements. *Id.* at 60-61. Staff notes that there are currently no issues regarding the current NM interconnection rules and therefore does not support the use of any model rules suggested by other parties. *Id.* at 61-62.

AAEA Surreply Comments

AAEA does not support imposing artificial size caps on individual NMFs as proposed by AECC and EAI. AAEA's position is that under net-metering a cap always exists – the cap is the generation needs of the NMC. Therefore AAEA supports the Staff's amendments to the NMF definition. AAEA Surreply Comments at 5.

AECC Surreply Comments

AECC recommends establishing a maximum generation threshold of 1 MW because any facility in excess of 1 MW is not considered a NMF and instead should be subject to approval by the FERC as a Qualifying Facility. AECC opines that a 1 MW threshold is consistent with the Commission's current *Cogeneration Rules*, as well as

Ark Code Ann. § 23-18-602(a), which states that "net energy metering encourages the use of renewable energy resources . . . by reducing utility interconnection and administration costs for small consumers of electricity." AECC Surreply Comments at 2.

AEEC Surreply Comments

AEEC says the existing rate design may be unjust and unreasonable because each customer class has a different rate schedule with the potential to produce different economics. In other words, a customer class that has a customer charge that is a larger percentage of its monthly bill may not receive the same benefits from a net-metering project. AEEC Surreply Comments at 5-6.

AG Surreply Comments

The AG disagrees with limiting non-residential net-metering projects to 1 MW. Mr. Volkmann says doing so is arbitrary, is inconsistent with the statute for large customers, and will discourage large businesses seeking renewable energy. To be consistent with the statute and encourage businesses who want access to large-scale renewables, the AG says any limit should be based on a customer's usage, such as SEA's and Audubon's recommended cap based on 125% of a customer's load. Volkmann Surreply Testimony at 4-5.

Ball Surreply Comments

Mr. Ball points out that the size of NMFs is limited to the customer's usage and that issues with distribution and transmission systems are addressed in the interconnection agreement. Ball Reply Comments at 2. He suggests that the limit of 20 mVA which already exists for commercial customers with large fossil fueled generation also be the limit for NMFs. *Id.* at 3.

Contreras Surreply Comments

Mr. Contreras disagrees with suggestions to limit NMFs to 1 MW, instead stating size limits should be determined on a case-by-case basis and based on maximum customer load, with limits commonly set at 125% of the maximum load. Contreras Surreply Comments at 10-14.

EAI Surreply Comments

EAI says there should be a generation capacity cap of 1 MW applied to a single point of interconnection. Such facilities would follow the process proposed by Staff in Rule 2.06. Any facility greater than 1 MW would fall under the Commission's *Cogeneration Rules* as a Qualifying Facility. EAI Surreply 4-5. EAI also says the Commission should reject any proposal to allow a customer to install a NM facility that is sized to offset more than their maximum requirements for electricity (*e.g.*, 125% as proposed by Audubon). EAI Surreply Comments at 5-6.

OG&E Surreply Comments

OG&E recommends that no new NMFs above 300 kW be approved until the NM Working Group concludes its analysis of rate design and rules are promulgated. OG&E also argues Ark. Code Ann. § 23-18-604(b)(7)(A-B), requires that an analysis be conducted (by the customer and vetted through the regulatory process) showing that the NMF is not for residential use and that increasing the capacity limit at that specific facility would increase the State's ability to attract business to Arkansas. OG&E Surreply Comments at 3-4.

Scenic Hill Surreply Comments

Scenic Hill generally agrees with Sierra, TASC, and SEA and specifically agrees

with the AG that model interconnection standards should be adopted. Scenic Hill Surreply Comments at 3-4. Scenic Hill states that there is no technical reason to limit the ability to interconnect or limit system size to 125% of maximum load or 1 MW. *Id.* at 5-6. Scenic Hill disagrees with SWEPCO that the Commission's evaluation of environmental and public policy benefits must be quantified only on the books and records of utilities. *Id.* at 9. Scenic Hill supports removing the 300 kW cap or significantly raising it to 5 MW and argues that the Commission has the authority to increase the generating cap limits under AREDA and avoid a case-by-case approval. *Id.* at 10-11.

Sierra Surreply Comments

Sierra states that capping net-metering is unnecessary to protect the distribution system or other ratepayers and that it is inappropriate to prohibit the interconnection of larger NMFs pending later decisions in this Docket. Sierra Surreply Comments at 2-4. Sierra also disagrees with SWEPCO that only benefits within the cost-of-service framework should be considered. *Id.* at 4.

SWEPCO Surreply Comments

SWEPCO believes NMFs greater than 1 MW should operate under the Commission's *Cogeneration Rules* and points out that as the size of the NMF increases, so do the impacts to the transmission and distribution system and management of those systems. SWEPCO counters several parties' statements that there are cost savings because of reduced investments in the distribution system capacity and upgrades and deferrals by pointing out that unless an amount of equivalent load can be immediately curtailed when a NMF resource fails, the utility is still required to size its distribution

facilities to meet the maximum load of its NMCs. SWEPCO notes that it has to look at the worst-case scenario to ensure the power quality to all other customers. SWEPCO points out that customers over 1 MW have always had and continue to have a viable alternative to net-metering by being designated a Qualified Facility under the *Cogeneration Rules*. SWEPCO Surreply Comments at 10-14.

Walmart Surreply Comments

Walmart says that completely disallowing facilities in excess of 300 MW is contrary to the intent and plain language of Act 827 and unsupported by any evidence. Walmart Surreply Comments at 5.

AG Public Hearing Testimony

AG witness Volkmann testifies that instead of having a finite cap on size, the review process should be structured so that smaller systems (less than 25 kW) are expedited and larger systems have a closer review. T. 982-83.

EAI Public Hearing Testimony

EAI's witness testifies that several adjacent states have an overall cap on NMFs: California has an overall cap on the number of net-metering systems and Louisiana and Mississippi have caps on the overall systems that can come online as well as on individual systems. T. 777-78. EAI advocates a bright line cap on individual system size to provide complete transparency. T. 778-79. Without a particular line that says no more than so many megawatts or so much percentage, EAI states that it is difficult for the Commission to judge when and if NMFs should be denied. T. 779-80.

Empire Public Hearing Testimony

Empire's witness testified at the hearing that Missouri rules and utility tariffs

have provisions that the NM schedule is only available until the capacity of the NMFs equal five percent of the previous year's load. With an overall system load of about 1100 MW, Empire currently has NMFs of about 11 MW, or one percent. T. 780.

OG&E Public Hearing Testimony

OG&E's witness testified at the hearing that OG&E does not advocate a particular size limit, saying instead that it depends on the limits of each circuit and should involve a case-by-case determination. T. 755.

SWEPCO Public Hearing Testimony

SWEPCO's witness testified at the hearing that its Integrated Resource Plan (IRP) accounts for NMFs by using ten percent of the NMF capacity in the IRP for planning purposes because of its intermittent nature; its 2015 IRP shows one MW associated with SWEPCO's ten MW of NMFs. T. 775-76.

Commission Findings

In Order No. 1, the Commission sought comments on several issues involving NMFs over 300 kW and possible guidelines for approval of those facilities pursuant to AREDA. The general issues that arose are:

- Whether a maximum size should be imposed
- Case-by-case determinations vs. a blanket determination
- Guidelines and filing requirements for the application process

Although several commenters raised issues about community and virtual net-metering as they relate to NMFs over 300 kW, these topics are beyond the scope of this Docket and will be addressed in the companion Docket No. 16-028-U.

Whether a maximum size should be imposed

Some parties point out that the reference in Ark. Code Ann. § 23-18-602 to "small consumers of electricity" supports setting a cap on the size of NMFs, contending that NMFs over 1 MW are not for "small" consumers. While it is true that AREDA has set limits on the size of NMFs, it is also true that AREDA has always contemplated that those size limits may be exceeded in certain circumstances and has not set an upper limit in those circumstances.

The Commission has had the ability to approve a NMF over the statutorily-set limits since AREDA was enacted. As originally enacted by Act 1781 of 2001, AREDA in Ark. Code Ann. § 23-18-604 stated that the Commission:

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

In 2013, Act 1221 revised that section to provide that the Commission:

> (4) May expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel, if so doing results in distribution system, environmental or public policy benefits; [and]
>
> (5) May increase the peak limits for individual net-metering facilities, if so doing results in distribution system, environmental or public policy benefits.

In 2015, Act 827 again changed Ark. Code Ann. § 23-18-604(b) to revise subsection (5) and add a new subsection (7):

> (5) May increase the generating capacity limits for individual net-metering facilities, if so doing results in distribution system, environmental or public policy benefits;
> . . . ;
> (7) May allow a net-metering facility with a generating capacity that exceeds three hundred kilowatts (300 kW) if:
> (A) The net-metering facility is not for residential use; and

(B) Allowing an increased generating capacity for the net-metering facility would increase the state's ability to attract business to Arkansas.

Therefore, although AREDA specifically mentions small consumers and the benefits to them through net-metering, AREDA by its terms does not restrict net-metering to small consumers. AREDA does not set size limitations on the Commission's ability to approve exceeding the 300 kW limits under § 23-18-604(b)(5) or (7) except that by definition a NMF "is intended primarily to offset part or all of the net-metering customer requirements for electricity." Ark. Code Ann. § 23-18-603(6)(E).

Several parties suggest that generation facilities over one MW should be categorized as Qualifying Facilities (QFs) under the Commission's *Cogeneration Rules*. The *Cogeneration Rules* were in effect when the General Assembly enacted AREDA, and the General Assembly did not impose such limitation on NMFs. The Commission notes that QFs and NMFs are defined differently, serve different purposes, are subject to different procedures and tariffs, and offer different compensation. Importantly, NMFs must be intended primarily to offset part or all of the NMC's requirements for electricity, while QFs have no such limitations. The *Cogeneration Rules* (Section 2.4(a)(1)) define a small power production facility as one that does "not exceed 80 megawatts," with no minimum size delineated, while cogeneration facilities have no size limitations. The *Cogeneration Rules* (Section 3.4(c)) require utilities to file a standard rate for QFs of 100 kW and less, not one MW or less. There is nothing in the *Cogeneration Rules* which requires or suggests that a one MW facility is more properly a QF instead of a NMF solely because of its size. And although parties imply that large NMFs would qualify as QFs, there are no analyses or specific facts offered that support

this conclusion. The parties have not offered any compelling evidence that the General Assembly intended to foreclose net-metering to facilities over one MW by requiring such a facility to be a QF merely because it is over one MW.

Instead of imposing an arbitrary limit on the maximum size of NMFs, it is consistent with AREDA to make a case-by-case determination on whether to allow a NMF over 300 kW. Such a determination under AREDA must entail findings, *inter alia*, that the NMF "can operate in parallel with an electric utility's existing transmission and distribution facilities" and that it "is intended primarily to offset part or all of the net-metering customer requirements for electricity." Ark. Code Ann. § 23-18-603(6)(D) and (E). The determination also requires a finding under Ark. Code Ann. § 23-18-604(b)(5) that increasing the limit "results in distribution system, environmental or public policy benefits" or a finding under Ark. Code Ann. § 23-18-604(b)(7) for non-residential NMFs that increasing the limit would "increase the state's ability to attract business to Arkansas." Therefore, the definition of NMFs and the requirements to exceed the statutory size effectively limit which facilities may qualify to operate under AREDA. The evidence does not support a generic restriction on NMF size but rather a case-by-case determination on size based on the facts of a particular case. The Commission therefore declines to adopt a generic size restriction on NMFs.

The Commission also rejects the proposals of parties to set limits such as 125% of customer load or 120% of average annual consumption. By definition, NMFs must be intended to offset "part or all" of the customer requirements for electricity. The proposals are inconsistent with the definition in that all seek to exceed the customer requirements.

Case-by-case determinations vs. a blanket determination

Although some parties requested that the Commission make a blanket or overall determination that NMFs have generic environmental and public policy benefits and offer significant opportunities for business in Arkansas, the Commission questions whether it has such authority under Ark. Code Ann. § 23-18-604(b)(5) or (7). The Commission finds that the better course of action at this time is to evaluate each application to exceed the NMF size on a case-by-case basis. AREDA was passed to encourage net-metering, but it also contains checks and balances to assure that net-metering is being properly deployed.

Guidelines and filing requirements for the application process

Staff's standard application under proposed Rule 2.06 was supported by most parties to this Docket. On the basis of Staff's rationale and recommendations accepting some of Audubon's clarifying modifications, the Commission adopts Staff's Surrebuttal proposal for Rule 2.06 with the following modifications. Because Ark. Code Ann. § 23-18-604(b)(5) and (7) are two distinct methods for obtaining approval for increasing generating capacity over the statutory limit, the reference in subsection A should be to subsection "(5) or (7)" instead of "(5) and (7)."

In subsection B., the Commission deletes the references to "testimony, exhibits, or other documentation" as redundant as the RPPs already require these documents. In subsection B.3., the Rules require the Application to include evidence that the NMF "will not" exceed the customer's requirements. To more closely follow the statutory language of Ark. Code Ann. § 23-18-603(6)(E), the Commission substitutes the phrase "is not intended to" exceed the customer's requirements.

The Commission finds that those procedures, as revised herein, are appropriate requirements to enable the Commission to consider applications to exceed the generating capacity limit.

As noted *infra*, the Commission declines at this time to adopt any of the Model Interconnection Rules promoted by several of the parties and transfers consideration of that issue to Docket No. 16-028-U. The evidence does not show that the current interconnection rules are insufficient at this time.

SECTION 3. INTERCONNECTION OF NET- METERING FACILITIES TO EXISTING ELECTRIC POWER SYSTEMS

Rule 3.01 Requirements for Initial Interconnection of a Net-Metering Facility

A. A Net-Metering customer shall execute a Standard Interconnection Agreement for Net-Metering Facilities (Appendix A) prior to interconnection with the utility's facilities.

B. A Net-Metering Facility shall be capable of operating in parallel and safely commencing the delivery of power into the utility system at a single point of interconnection. To prevent a Net-Metering Customer from back-feeding a de-energized line, a Net-Metering Facility shall have a visibly open, lockable, manual disconnect switch which is accessible by the Electric Utility and clearly labeled. This requirement for a manual disconnect switch shall be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

C. The customer shall submit a Standard Interconnection Agreement to the Electric Utility at least thirty (30) days prior to the date the customer intends to interconnect the Net-Metering Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed for the notification to be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The Electric Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

D. Following notification by the customer as specified in Rule ~~4~~3.01.C, the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

E. The Net-Metering Facility, at the Net-Metering Customer's expense, shall meet safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and Underwriters Laboratories (UL).

F. The Net-Metering Facility, at the Net-Metering Customer's expense, shall meet all safety and performance standards adopted by the Electric Utility and filed with and approved by the Commission pursuant to these Rules that are necessary to assure safe and reliable operation of the Net-Metering Facility to the Electric Utility's system.

G. If the Electric Utility's existing facilities are not adequate to interconnect with the Net-Metering Facility, the Net-Metering Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities. ~~any changes will be performed in accordance with the Utility's Extension of Facilities Tariff.~~

SWEPCO Reply Comments and AECC Reply Comments

SWEPCO and AECC recommend that Rule 3.01.B., which requires a visibly open, lockable, manual disconnect switch that is accessible by the Electric Utility, and which may be waived under certain conditions, be modified to remove the waiver provision. SWEPCO Reply at 6; AECC Reply at 13. AECC's position is that the waiver of a visibly open, lockable, manual disconnect switch is a direct violation of the 2014 National Electrical Code (NEC) Section 705.22 and that such a switch is necessary for the safety of utility employees. AECC Reply at 12-13. SWEPCO states that it is imperative that the disconnect switch be a requirement with no waiver, in order to prevent back-feeding that may impair the safety of its employees who work with NMFs. SWEPCO Reply at 6.

At the public hearing, Mr. Shields, testifying for AECC, stated that it is a best practice for any type of electrical appliance to have an on/off switch. T. 763.

AG Reply Comments

Mr. Volkmann, for the AG, notes that the need for what he describes as a "redundant" manual disconnect switch in addition to the disconnect switches and anti-islanding capabilities in modern inverters is often debated. AG at 8. He states that, during the period after the Commission's 2002 ruling on this issue, inverter technology and technical standards have only improved. He states that, during an outage, the UL Standard 1741 safety certification requires an inverter to disconnect within two seconds and to remain disconnected until sensing five minutes of restored service. *Id.* Mr. Volkmann testifies that utility experience in eighteen states, including Arkansas, demonstrates that no manual disconnect switch is needed and recommends maintaining the existing policy. *Id.* at 9.

EAI Reply Comments

EAI supports Staff's proposed Rule 3.01.G, which requires the NMC to pay the cost of additional or reconfigured utility facilities if the utility's existing facilities are not adequate to interconnect the NMF. EAI, however, requests that the Commission consider within Phase 1 of this docket whether utilities may implement a one-time fee to reflect labor, ongoing O&M, and meter upgrade costs associated with the initial setup and interconnection of new NMC accounts. EAI Reply at 11.

Costner Reply Comments

Ms. Costner raises the concern that Staff's proposed Rule 3.01.G., by requiring upfront payment for any necessary distribution system upgrades (rather than merely

providing that NMCs are "responsible for" these costs), will create a barrier to adoption of NM by low-income customers. Costner Reply at 8.

AG Surreply Comments

The AG states that the language concerning customer payment for interconnection costs in Staff's proposed Rule 3.01.G. is too vague. Volkmann Surreply at 9. Mr. Volkmann testifies that Staff's proposed requirement that the NMC "shall pay the cost of additional facilities" prior to their installation or reconfiguration, and that NMCs with facilities greater than 300 kW will "be responsible for the actual costs of conducting the preliminary interconnection site review and any subsequent cost associated with site screening" does not explain the process by which additional costs are determined or how customers will be notified of estimated costs. Mr. Volkmann testifies that the rules should establish clear standards to define review processes, fees, and timelines for net-metering systems of all sizes. *Id.*

In this regard, Mr. Volkmann recommends that the Commission adopt interconnection standards based on the 2013 Federal Energy Regulatory Commission (FERC) Small Generator Interconnection Procedures (SGIP) and the Interstate Renewable Energy Council (IREC) Model Interconnection Procedures. *Id.* at 9-10. Mr. Volkmann states that these models reflect "best practices" for interconnection. He explains that clear, consistent, transparent interconnection rules establish fast-track screens to expedite approval of smaller facilities and avoid costly delays that may hinder project viability. *Id.* at 10. Mr. Volkmann notes that IREC's annual *Freeing the Grid* report gives Arkansas an "A" for net-metering rules but an "F" for interconnection and recommends adoption of interconnection best practices. *Id.* at 11.

Staff Surreply Comments

Staff notes that the Commission addressed the issue of a manual disconnect switch in Docket No. 02-046-R, determining that a redundant switch is not necessary under the conditions specified in Rule 3.01 B. Order No. 3, July 3, 2002 at 7-8. Staff Surreply at 24.

Staff states that there is no evidence that the current practice of interconnection is unsafe or that NEC Code Enforcement Officers require such external disconnect devices. *Id.* Having reviewed the NEC Code, Staff finds no requirement in the NEC for a utility-accessible switch for the interconnection of a utility-interactive inverter. Staff also interprets the NEC to allow connection of the output of a utility-interactive inverter to the load side of the service disconnecting means of the other sources at any distribution equipment on the premises, including branch circuit panel boards, if such devices meet the requirements of NEC Section 705.22. *Id.* at 25.

Staff states that it supports the safe installation and operation of NMFs that meet NEC's requirements and that its proposed Rule 3.01.26 B. is consistent with NEC's requirements. Staff does not recommend modifying its proposed Rule 3.01.B. *Id.* at 25-26.

Staff responds to EAI's proposed "one-time" interconnection fee, stating that Ark. Code Ann. § 23-18-604(b)(2) addresses this issue and provides that the Commission may authorize an electric utility to assess a NMC a greater fee or charge

> if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's customer base.

Staff states that there is no evidence in the record of this docket to support such a

finding and that consideration of a one-time fee for interconnection of NMFs is not appropriate during Phase 1 of this docket. Staff Surreply at 27.

Staff responds to Ms. Costner that upfront payment is necessary in order to protect other ratepayers from the risk that the NMC may not reimburse a utility's investment in upgrades. Staff Surreply at 28.

Staff states that it is unaware of any issues regarding the interconnection rules (and the Standard Interconnection Agreement) within the current NMRs. Staff states that its proposed interconnection requirements are reasonable and sufficient, and that the Commission can consider the adoption of model rules if issues arise in the future. Staff states that the IREC Model Interconnection Procedures may be appropriate to consider if issues arise. Staff Surreply at 28.

Public Hearing Testimony of Empire

Mr. Eichman, for Empire, stated that the issue of a manual disconnect switch has been discussed in Missouri and that, for systems below 600 volts, there is some question as to whether it is needed. He stated, however, that if the NMF has the potential to go through a transformer (which he describes at 7200 volts), then the NEC seems to require a switch. He stated that, for a residential customer, it is probably less than a hundred dollars for the switch and that it is "pretty much required" in Missouri. T. 763-764. He noted that Empire independently tests the NMF at installation by simulating a power outage, to ensure that it will disconnect within two seconds. T. at 764. Mr. Eichman agreed with Mr. Ball that the waiver usually is not an issue because most systems include the switch. *Id.*

Public Hearing Testimony of Ball

Mr. Ball testified at the public hearing that waiver of the disconnect switch is "not a real big deal." He asserts that numerous standards ensure that inverter-based NMFs are safe and that they no longer continue to contribute power to the grid if utility power is interrupted (i.e., NMFs do not "island"). He states, however, that every NMF he has been involved with since 2002 has included a manual disconnect switch for convenience. He testifies that a lot of inverters currently have a UL 98 rated disconnect switch that serves as a visibly open, lockable disconnect. T. at 444.

Commission Findings

On the basis of the track record of safety in eighteen states and Mr. Volkmann's testimony that inverter safety has improved during the almost fifteen years since the Commission last addressed this question, the Commission adopts Staff's proposed language for Rule 3.01.B with respect to the waiver of the manual disconnect switch requirement. The Commission notes that there is strong evidence in the record that such disconnect switches are, nevertheless, widespread, reducing any necessity to codify a technology-specific requirement which is more properly governed by national safety-certification bodies.

With respect to Rule 3.01.G and EAI's proposed one-time fee, the Commission finds that the record during Phase 1 of this docket does not adequately address the question of whether direct interconnection and administration costs of net-metering outweigh various benefits, as required by Ark. Code Ann. § 23-18-604(b)(2). A request for an additional fee under the statute should be specifically supported and justified. Therefore, the Commission adopts Staff's position on Rule 3.01.G.

On the record as it stands, the Commission adopts Staff's proposed

interconnection requirements as provided in Rule 3.01. Furthermore, the Commission hereby transfers consideration of the adoption of best practices for interconnection to Docket No. 16-028-U for further consideration.

Rule 3.02 Requirements for Modifications or Changes to a Net-Metering Facility

A. Prior to being made, the Net-Metering Customer shall notify the Electric Utility of, and the Electric Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part I, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. ~~Modifications or changes made to a net metering facility shall be evaluated by the electric utility prior to being made.~~ The notice provided by the Net-Metering Customer shall provide detailed information describing the modifications or changes to the Electric Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made.~~prior to making the modifications to the net metering facility.~~ The utility shall review the proposed changes to the facility and provide the results of its evaluation to the customer, in writing, within thirty (30) days of receipt of the customer's proposal. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

(No contested issues)

B. If the Net-Metering Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.

Commission Findings

Consistent with the Commission's findings on proposed Rule 2.05.D.5, the Commission declines to allow a utility to suspend electric service for a customer's failure to obtain approval of modifications of its NMF. However, mindful that customers should not be allowed to violate the terms of the Standard Interconnection Agreement and NMRs, the Commission revises subsection B as

follows to allow a utility to suspend a customer's net-metering service:

> B. If the Net-Metering Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend **Net-Metering** service pursuant to **the procedures in** Section 6 of the Commission's General Service Rules.

By its reference to the procedures in Section 6 of the GSRs, the Commission expects that a utility will follow similar appropriate procedures by giving notice to the customer before net-metering service is suspended.

> C. A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset ~~part or~~ all of the Net-Metering Customer requirements for electricity.

Audubon Initial Comments

Audubon notes that Staff's proposed Rule 3.02.C prohibits modifications of an NMF that would cause it to generate electricity in excess of the customer's requirements, citing Staff Surreply at 29. Audubon comments that this language is redundant and unnecessary because Rules 3.02.A. and 3.02.B., which require the NMC to provide notice to the utility of modifications and to obtain prior authorization for them, is sufficient. Audubon Initial at 14.

Costner Reply Comments

Ms. Costner comments that Staff's proposed language limiting NMF modifications to those that do not cause the NMF to exceed the NMC's requirements for electricity appears to vary from the statutory definition of NMF, in that the statute allows residential NMFs with "[t]he greater of twenty-five kilowatts (25 kW) or one hundred percent (100%)" of the NMC's "highest monthly usage in the previous twelve months for residential use." Ms. Costner proposes to revise proposed Rule 3.02.C. to

prohibit modifications that result in NMF generation "in excess of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the NMC's highest monthly usage in the previous twelve months for residential use." Costner Reply at 9.

EAI Reply Comments

EAI recommends a revision of Staff's initial rule proposal to delete the words "part or" in Rule 3.02.C, and from the corresponding locations in the Standard Interconnection Agreement, to ensure that a NMC who initially installs an under-sized NMF may later add capacity up to the NMC's requirements for electricity. EAI Reply at 13. Staff accepted EAI's recommendation in its final proposal for Rule 3.02.C, noting that EAI is correct in observing that Staff did not intend to prohibit a customer who initially installs an under-sized system, to later add capacity up to all of the NMC's requirements for electricity. Accordingly, Staff has deleted the words "part or" from that rule and from corresponding sections of the Standard Interconnection Agreement. Staff Surreply at 30.

Staff Surreply Comments

Staff continues to support inclusion of its provision specifically prohibiting modifications that cause NMF capacity to exceed the NMCs requirements for electricity. Staff Surreply at 29. Staff further supports its proposed rule language without Ms. Costner's revisions, stating that the language is consistent with the definition of NMF and recognizes that the size of a NMF is limited by the NMC's requirements for electricity. Staff Surreply at 30.

Commission Findings

The Commission adopts Staff's proposed Rule 3.02.C. The Commission

acknowledges that taken in isolation, Ark. Code Ann. § 23-18-603(6)(B)(i) specifies that residential NMFs may generate up to the greater of 25 kW or 100% of the NMC's highest monthly usage in the previous twelve months. Ark. Code Ann. § 23-18-603(6)(E), however, is a separate provision also limiting the size of NMFs, which provides that NMF generating capacity is intended primarily to offset part or all of the NMC requirements for electricity. In order to give each provision effect, and to implement the underlying purpose of net-metering (offsetting customer's electricity requirements), the Commission adopts Staff's proposal.

Rule 3.03 Requirements for Preliminary Interconnection Site Review Request

A. For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to Rule 2.06.B.4, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information, Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

B. Following notification by the customer as specified in Rule 3.03.A, the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

C. The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs of conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

D. The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility.

Audubon Initial Comments

Proposed Rule 3.03 establishes requirements for a customer to submit a Preliminary Interconnection Site Review Request. Without proposing specific revisions, Audubon states that it has found through its own experience that the lack of published, easily accessible estimates of costs associated with the interconnection process creates a level of uncertainty that can be a barrier to consumer participation in Net-Metering. Audubon recommends that the rule provide for the establishment of standardized published costs or a range of costs for all phases of the interconnection process. Audubon Initial at 15.

Staff Surreply Comments

Staff responds similarly to its response to EAI's recommendation that the Commission consider authorizing the utility to charge a fee for the initial utility costs of approving a NMF. Staff notes that the statute requires that any new or additional charge that would increase a NMC's costs beyond those of other customers in the rate class must be filed for approval, subject to a finding that the cost outweighs any benefits to the distribution system and environmental and public policy benefits. Staff Surreply

at 31.

Commission Findings

The Commission adopts Staff's proposed Rule 3.03 but reserves final judgment regarding publication of standard interconnection costs until consideration of model interconnection rules in Docket No. 16-028-U, or the consideration of additional costs and benefits of net-metering in Phase 2 of this docket.

SECTION 4. STANDARD INTERCONNECTION AGREEMENT, PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST, AND STANDARD NET-METERING TARIFF FOR NET-METERING FACILITIES

Rule 4.01 Standard Interconnection Agreement, Preliminary Interconnection Site Review Request, and Standard Net-Metering Tariff

Each Electric Utility shall file, for approval by the Commission, a Standard Interconnection Agreement for Net-Metering Facilities (Appendix A), Preliminary Interconnection Site Review Request (Appendix A-1) and a Net-Metering Tariff in standard tariff format (Appendix B).

(No contested issues)

Rule 4.02 Filing and Reporting Requirements

Each Electric Utility shall file in Docket No. 06-105-U by March 15 of each year, a report individually listing each ~~all existing~~ Net-Metering Facility~~ies~~, the type of facility (Solar, Wind, etc.), its use (Residential or Other), ~~and the~~ generator capacity rating, ~~and, where applicable, the~~ inverter ~~power~~capacity rating, and if the facility is associated with Additional Meters (Yes or No), as of the end of the previous calendar year. The annual report shall be provided in spreadsheet format. ~~of each net metering facility as of the end of the previous calendar year.~~

Costner Reply Comments

Ms. Costner makes an unopposed recommendation that the annual Net-Metering Reports required under this Rule be consistent in form and presentation of content and use a common format, such as Excel.

Staff Surreply Comments

Staff incorporates this recommendation in Rule 4.02 and, in addition, recommends that the report include additional information regarding the use, whether residential or other, and whether the NMF has aggregated accounts.

Commission Findings

The Commission approves Staff's recommended revisions to Rule 4.02. The Commission further adopts the recommendations that the report include additional information regarding the use, whether residential or other, and whether the NMF has aggregated accounts.

The Commission additionally notes that the word "facility" has been replaced with "resource" in the definitions and thus the first use of "facility" in this rule should be changed to "Resource." The second use should be changed to "Net-Metering Facility."

STANDARD INTERCONNECTION AGREEMENT FOR NET-METERING FACILITIES
I. STANDARD INFORMATION

Section 1. Customer Information
Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Facility Location (if different from above): _____
Daytime Phone: _____ Evening Phone: _____
Utility Customer Account Number (from electric bill) to which the Net-Metering Facility is physically attached: _____

Audubon Initial Comments

Audubon recommends that the word "Number" be added after "Utility Customer Account" in Section 1 of the Standard Interconnection Agreement for Net-Metering Facilities (Standard Interconnection Agreement) to clarify whether the customer should include the account number or the customer's account name. Audubon also

recommends removing at the end of the same line the phrase "to which the Net-Metering Facility is physically attached," asserting that the language is an unnecessary over-clarification that creates visual clutter on the form and makes it feel more intimidating to customers. Audubon Initial at 15.

Staff Surreply Comments

Staff agrees to this clarifying addition of "Number," but continues to support its recommendation to include the clarifying phrase, disagreeing that requesting this information would be intimidating to customers. Staff Surreply at 32-33.

Commission Findings

The Commission accepts Staff's recommendation and revisions. The Commission agrees that the recommended phrase adds clarification as customers may have multiple accounts with a utility.

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro turbine (circle one)
Generator Rating (kW): _____ AC or DC (circle one)
Describe Location of Accessible and Lockable Disconnect (if required): _____
_____
Inverter Manufacturer: _____ Inverter Model: _____
Inverter Location:_____ Inverter Power Rating: _____
Expected Capacity Factor: _____
Expected annual production of electrical energy (kWh) calculated using industry recognized simulation model (PVWatts, etc.): _____

Audubon Initial Comments

Audubon recommends adding clarifying language to Section 2 to recognize that the requirement for an "Accessible and Lockable Disconnect" may not be necessary as described under rule 4.01.B. Audubon recommends adding "(if required)"to the end of the section as follows: "Describe Location of Accessible and Lockable Disconnect (if required). Audubon Initial at 15.

Costner Reply Comments

Ms. Costner recommends using GPS coordinates to identify the location of the Accessible and Lockable Interconnect and the Inverter.

Staff Surreply Comments

Staff agrees to Audubon's clarifying modification. Staff Surreply at 33. Staff does not recommend requiring GPS coordinates to identify the location of the Accessible and Lockable Disconnect and the Inverter, noting that depending on the location of these devices, the GPS coordinates may not clearly identify whether they are internal or external to the NMF. Staff Surreply at 33.

Commission Findings

The Commission accepts Staff's rationale and recommendation and approves its draft of Section 2 as amended in response to Audubon.

Section 3. Installation Information
Attach a detailed electrical diagram of the Net-Metering Facility.
Installed by: _____Qualifications/Credentials: _____
Mailing Address:_____
City:_____State: _____ Zip Code:_____
Daytime Phone:_____ Installation Date:_____
(No contested issues)

Section 4. Certification
~~1.~~ The system has been installed in compliance with the local Building/Electrical Code of _____(City/County)
Signed (Inspector):_____ Date:_____
(In lieu of signature of inspector, a copy of the final inspection certificate may be attached.)

~~2.~~ The system has been installed to my satisfaction and I have been given system warranty information and an operation manual, and have been instructed in the operation of the system.
Signed (Owner):_____ Date:_____

(No contested issues)

Section 5. E-mail Addresses for parties
~~1.~~ Customer's e-mail address:

_____

~~2.~~ Utility's e-mail address: _____ (To be provided by utility.)

(No contested issues)

Section 6. Utility Verification and Approval

~~1.~~ Facility Interconnection Approved: _____ Date: _____

_____

Metering Facility Verification by: _____ Verification Date: _____

(No contested issues)

II. INTERCONNECTION AGREEMENT TERMS AND CONDITIONS

This Interconnection Agreement for Net-Metering Facilities ("Agreement") is made and entered into this _____day of _____, 20_____, by _____("Utility") and _____ ("Customer"), a_____(specify whether corporation or other), each hereinafter sometimes referred to individually as "Party" or collectively as the "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

(No contested issues)

Section 1. The Net-Metering Facility

The Net-Metering Facility meets the requirements of Ark. Code Ann. § 23-18-603(6) and the Arkansas Public Service Commission's Net-Metering Rules.

(No contested issues)

Section 2. Governing Provisions

The Parties shall be subject to the provisions of Ark. Code Ann. § 23-18-604 and the terms and conditions set forth in this Agreement, the Commission's Net-Metering Rules, the Commission's *General Service Rules,* and the Utility's applicable tariffs.

(No contested issues)

Section 3. Interruption or Reduction of Deliveries

The Utility shall not be obligated to accept and may require Customer to interrupt or reduce deliveries when necessary in order to construct, install, repair, replace, remove, investigate, or inspect any of its equipment or part of its system; or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices. Whenever possible, the Utility shall give the Customer reasonable notice of the possibility that interruption or reduction of deliveries may be required. Notwithstanding any other provision of this Agreement, if at any time the Utility reasonably determines that either the facility may endanger the Utility's personnel or other persons or property, or the continued operation of the Customer's facility may endanger the

integrity or safety of the Utility's electric system, the Utility shall have the right to disconnect and lock out the Customer's facility from the Utility's electric system. The Customer's facility shall remain disconnected until such time as the Utility is reasonably satisfied that the conditions referenced in this Section have been corrected.

(No contested issues)

Section 4. Interconnection

Customer shall deliver the as-available energy to the Utility at the Utility's meter.

Utility shall furnish and install a standard kilowatt hour meter. Customer shall provide and install a meter socket for the Utility's meter and any related interconnection equipment per the Utility's technical requirements, including safety and performance standards.

The customer shall submit a Standard Interconnection Agreement to the Electric Utility at least thirty (30) days prior to the date the customer intends to interconnect the Net-Metering Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The Electric Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

Following submission of the Standard Interconnection Agreement~~notification~~ by the customer ~~as specified in Rule 3.01.C~~, the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Utility's existing facilities are not adequate to interconnect with the Net-Metering Facility, the Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities.

To prevent a Net-Metering Customer from back-feeding a de-energized line, the customer shall install a manual disconnect switch with lockout capability that is accessible to utility personnel at all hours. This requirement for a manual disconnect switch will be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

Customer, at his own expense, shall meet all safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and

Underwriters Laboratories (UL).

Customer, at his own expense, shall meet all safety and performance standards adopted by the utility and filed with and approved by the Commission ~~pursuant to Rule 3.01.F~~ that are necessary to assure safe and reliable operation of the Net-Metering Facility to the utility's system.

Customer shall not commence Parallel Operation of the Net-Metering Facility until the Net-Metering Facility has been inspected and approved by the Utility. Such approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Utility's approval to operate the Customer's Net-Metering Facility in parallel with the Utility's electrical system should not be construed as an endorsement, confirmation, warranty, guarantee, or representation concerning the safety, operating characteristics, durability, or reliability of the Customer's Net-Metering Facility.

(No contested issues)

Section 5. Modifications or Changes to the Net-Metering Facility Described in Part 1, Section 2

Prior to being made, the Customer shall notify the Utility of, and the Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part 1, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. ~~Modifications or changes made to a net metering facility shall be evaluated by the Utility prior to being made.~~ The notice provided by the Customer shall provide detailed information describing the modifications or changes to the Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made. ~~prior to making the modifications to the net metering facility.~~ The Utility shall review the proposed changes to the facility and provide the results of its evaluation to the Customer, in writing, within thirty (30) calendar days of receipt of the Customer's proposal. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Customer makes such modification without the Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.

A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset ~~part or~~ all of the Net-Metering Customer requirements for electricity.

Commission Findings

The Commission revises this section with the same changes made to Rule 3.02.B. and C by accepting Staff's revisions to the third paragraph and revising the second

paragraph as follows:

> If the Customer makes such modification without the Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Utility shall have the right to suspend **Net-Metering** service pursuant to **the procedures in** Section 6 of the Commission's General Service Rules.

Section ~~5~~6. Maintenance and Permits

The customer shall obtain any governmental authorizations and permits required for the construction and operation of the Net-Metering Facility and interconnection facilities. The Customer shall maintain the Net-Metering Facility and interconnection facilities in a safe and reliable manner and in conformance with all applicable laws and regulations.

(No contested issues)

Section ~~6~~7. Access to Premises

The Utility may enter the Customer's premises to inspect the Customer's protective devices and read or test the meter. The Utility may disconnect the interconnection facilities without notice if the Utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or the Utility's facilities, or property of others from damage or interference caused by the Customer's facilities, or lack of properly operating protective devices.

(No contested issues)

Section ~~7~~8. Indemnity and Liability

The following is Applicable to Agreements between the Utility and to all Customers except the State of Arkansas and any entities thereof, local governments and federal agencies:

Each Party shall indemnify the other Party, its directors, officers, agents, and employees against all loss, damages, expense and liability to third persons for injury to or death of persons or injury to property caused by the indemnifying party's engineering, design, construction, ownership, maintenance or operations of, or the making of replacements, additions or betterment to, or by failure of, any of such Party's works or facilities used in connection with this Agreement by reason of omission or negligence, whether active or passive. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity. It is the intent of the Parties hereto that, where negligence is determined to be contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence. Nothing in this paragraph shall be applicable to the Parties in any agreement entered into with the State of Arkansas or any entities thereof, or with local governmental entities or federal agencies. Furthermore, nothing in this Agreement shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof. The Arkansas State Claims Commission has exclusive jurisdiction over claims against the state.

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to or any liability to any person not a Party to this Agreement. Neither the Utility, its

officers, agents or employees shall be liable for any claims, demands, costs, losses, causes of action, or any other liability of any nature or kind, arising out of the engineering, design, construction, ownership, maintenance or operation of, or the making of replacements, additions or betterment to, or by failure of, the Customer's facilities by the Customer or any other person or entity.

(No contested issues)

Section 89. Notices

The Net-Metering Customer shall notify the Electric Utility of any changes in the information provided herein.

All written notices shall be directed as follows:

Attention:
[Utility Agent or Representative]
[Utility Name and Address]

Attention:
[Customer]
Name: _____
Address: _____
City:_____
Customer notices to Utility shall refer to the Customer's electric service account number set forth in Section 1 of this Agreement.

(No contested issues)

Section 10. Term of Agreement

The term of this Agreement shall be the same as the term of the otherwise applicable standard rate schedule. This Agreement shall remain in effect until modified or terminated in accordance with its terms or applicable regulations or laws.

(No contested issues)

Section 11. Assignment

This Agreement and all provisions hereof shall inure to and be binding upon the respective Parties hereto, their personal representatives, heirs, successors, and assigns. The Customer shall not assign this Agreement or any part hereof without the prior written consent of the Utility, and such unauthorized assignment may result in termination of this Agreement.

(No contested issues)

Section 12. Net-Metering Customer Certification

I hereby certify that all of the information provided in this Agreement is true and correct, to the best of my knowledge, and that I have read and understand the Terms and Conditions of this

Agreement.
Signature: _____ Date: _____
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Dated this _____ day of _____, 20__.

Customer:	Utility:
_____	_____
By: _____	By: _____
Title: _____	Title: _____
Mailing Address:	Mailing Address:
_____	_____
_____	_____
E-mail Address:	E-mail Address:
_____	_____

(No contested issues)

STANDARD INTERCONNECTION AGREEMENT FOR NET-METERING FACILITIES

Disclaimer
POSSIBLE FUTURE RULES OR RATE CHANGES, OR BOTH AFFECTING YOUR NET-METERING FACILITY

The following is a supplement to the Interconnection Agreement you signed with [Electric Utility].

1. Electricity rates, basic charges, and service fees, set by [Electric Utility] and approved the Arkansas Public Service Commission, are subject to change.
2. I understand that I will be responsible for paying any future increases to my electricity rates, basic charges, or service fees from [Electric Utility].
3. My Net-Metering System is subject to the current rates of [Electric Utility], and the rules and regulations of the Arkansas Public Service Commission (Commission). The [Electric Utility] may change its rates in the future with approval of the Commission or the Commission may alter its rules and regulations, or both may happen. If either or both occurs, my system will be subject to those changes.

By signing below, you acknowledge that you have read and understand the above disclaimer.

Name (printed)

Signature

Date

Staff Surreply Comments

Because existing rate structures may be grandfathered by the Commission after review of a statutory change, but rates, charges, or fees may change at any time, Staff recommends that NMCs be notified of this possibility at the time of their entering into their Interconnection Agreements. To provide notice to NMCs who install Net-Metering systems that the rates, charges, and fees in effect at the time of the installation of their facilities may change, Staff recommends adding a "Disclaimer" as an attachment to the Interconnection Agreement, to be signed separately by the customer. Staff Surreply at 34.

Public Hearing Testimony

During the public hearing, several witnesses responded to Commission questions concerning the disclaimer language proposed by Staff. Mr. Ball expressed concern that the term "rates" in the Disclaimer could be ambiguous if it is not accompanied by language that telegraphs to customers that rate structures might be grandfathered, but rates can go up. T. 440. AAEA witness Smith testified in general support of the Disclaimer but favored tweaking the language to clarify that the rate structure is not changed but that the regular rates and fees for electricity may change in the future. T. 552. Mr. Kelly testified that as a solar installer "we absolutely put in our estimates of [customers'] payback that we expect rates to increase three to four to five percent a year

from the electric utility, and we factor those expected increases in utility costs as a major impact on their rate of return." T. 553.

For the AG, Mr. Volkmann testified that he favored transparency in providing customers with information regarding potential changes on the horizon, but expressed concern whether the tone of the disclaimer might need to indicate that change could be a good or a bad thing, so as to avoid the Disclaimer having a chilling effect on net-metering. He added that in proceedings in other jurisdictions there have been findings that the compensation to the net-metering customer, particularly in low-cost states, doesn't fully cover the value that the customer is providing. He noted that the net-metering working group may conclude in a year that customers are being under-compensated rather than over-compensated. Consequently, he said he tended to agree with Mr. Smith that the Disclaimer may need some tweaking. T. 981.

Staff witness Brenske testified in response to Commission questioning regarding the proposed Disclaimer and other parties' suggestions to tweak the language, stating her opinion that "rates and rate structures change through time and . . . there's probably not a reason to believe that that's not going to happen whether it's for net metering or for any other rate schedule." T. 1241.

Commission Findings

The Commission accepts Staff's rationale and recommendation to include the proposed Disclaimer. Although the Commission is adopting grandfathering for certain customers at this time as set out *infra* in this order, the Commission notes that this ruling is made on the facts presented at this time and is not to be considered precedent for any request in the future to grandfathered customers for any subsequent rate

structure changes, if and when the issue arises again. The Commission will make such a determination on the facts presented at that time. Therefore, this Disclaimer appropriately provides customers with notice of the possibility of the identified changes.

PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST

Audubon Initial Comments

Audubon suggests either dividing the Preliminary Interconnection Site Review Request into required and optional information or creating two forms: one that would be required for projects seeking to exceed current generation limits (over 300 kW), and a second form that is designed to serve as the optional form for smaller project customers who request a preliminary site review. Audubon Initial at 16.

Staff Surreply Comments

In part on the basis that Audubon did not specify which information would be required or optional (or separated into two forms), Staff recommends retaining its proposed language. Staff states that the specified information should be sufficient for evaluation of proposed NMF interconnection requirements. Staff Surrebuttal at 35.

Commission Findings

The Commission notes that the Preliminary Interconnection Site Review Request is optional, not mandatory, and can be expected to be most pertinent for larger projects. Because it will largely serve the voluntary requests of projects with knowledgeable developers, the Commission adopts Staff's proposal as sufficient and not overly burdensome on developers of smaller projects.

I. STANDARD INFORMATION

Section 1. Customer Information

Name: _____

Contact Person: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Facility Location (if different from above): _____

Daytime Phone: _____ Evening Phone: _____

E-Mail Address: _____ Fax: _____

If the requested point of interconnection is the same as an existing electric service, provide the electric service account number: _____

Additional Customer Accounts (from electric bill) to be credited with Net Excess Generation ~~(in rank order)~~: _____

Annual Energy Requirements (kWh) in the previous twelve (12) months for the account physically attached to the Net-Metering Facility and for any additional accounts listed (in the absence of historical data reasonable estimates for the class and character of service may be made): _____

Audubon Initial Comments

Audubon indicates that there is no need to require a NMC to rank the order of its Additional Meters as part of the Preliminary Interconnection Site Review Request. Audubon Initial at 16.

Staff Surrebuttal Comments

Staff agrees with Audubon and removes the language "in rank order" from Section 1.

Commission Findings

The Commission accepts Staff's recommendation to remove "in rank order" from Section 1.

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro Turbine (circle one)

Generator Rating (kW): _____ AC or DC (circle one)

Expected Capacity Factor: _____

Expected annual production of electrical energy (kWh) of the facility calculated using industry recognized simulation model (PVWatts, etc): _____

(No contested issues)

Section 3. Interconnection Information
Attach a detailed electrical diagram showing the configuration of all generating facility equipment, including protection and control schemes.
Requested Point of Interconnection: _____
Customer-Site Load (kW) at Net-Metering Facility location (if none, so state): _____
Interconnection Request: Single Phase: _____ Three Phase: _____
~~Planned method of interconnection consistent with Rule 3.01.B. _____~~

Audubon Initial Comments

Audubon recommends that the line "Planned method of interconnection consistent with Rule 3.01.B [now 4.01.B]" at the end of Section 3 of the Preliminary Interconnection Site Review Request be removed. Audubon Initial at 16.

AECC Reply Comments

AECC recommends excluding the option that allows for no load at a NMF location, by striking the parenthetical "if none, so state" in the line of Section 3 of the Preliminary Interconnect Site Review Request. AECC's rationale for this recommendation is more fully explained in its recommendation to retain the language in Appendix B, X1.1 of the Net-Metering Tariff that was removed in Staff's Initial "strawman" that states: "Such facilities must be located on the customer's premise and . . ." AECC Reply at 11-12.

AECC further states that:

> Allowing a Net-Metering Customer to install a facility behind a Designated Meter that has no load will result in the utility transmitting and distributing power for the Net-Metering Customer. In such a case, net-metering can no longer be considered a minor account function, but rather an act of physics to move electrons from one place to another. Alternatively, requiring a Net-Metering Facility to be located next to load that will use the electric generation will establish a safeguard against generation in excess of what is required to offset part or all of a customer's generation requirement.

AECC Reply at 11.

Volkmann Surreply Comments

Mr. Volkman testifies for the AG that alternative forms of net-metering, such as virtual and community net-metering, often require that the facility be located off-site or in a different location than the customer's premises. To support those forms of net-metering, he recommends that the Commission adopt Staff's recommendation to eliminate the requirement that the NMF be located on the customer's premises. Volkmann Surreply at 10.

Staff Surreply Comments

Staff agrees to remove the line as recommended by Audubon since this Section already includes a requirement that a detailed electrical diagram showing the configuration of all of the generating facility equipment, including protection and control schemes, be provided.

Staff states that it removed the language noted by AEEC because requiring that the NMF be located on the customer's premises is not a requirement of Act 827. Staff responds that while AECC is correct in that Act 827 did not specifically address this issue, the statute does not require that the NMF be located at the NMC's load. In addition, Staff notes, the Commission agreed 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," citing Docket No. 12-060-R, Order No. 4 at 37. Furthermore, Staff argues, in allowing aggregation of meters on separate premises, the Commission stated:

> 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. Docket No. 12-060-R, Order No. 4 at 37-38. Moreover, Staff states, whether there is load behind the Designated Meter or not does not relieve the NMC from the requirement that the size of the NMF is limited to generating part or all of the NMC requirements for electricity. Therefore, for the reasons stated above, Staff continues to recommend that the parenthetical "if none, so state" is appropriate and should not be stricken. Staff Surrebuttal at 36-37.

Commission Findings

The Commission accepts Staff's recommendation to remove "Planned method of interconnection consistent with Rule 4.01.B."

Consistent with the Commission's finding on the net-metering tariff Section X.1.1 *infra*, the Commission further finds Staff's rationale and recommendation, as supported by the AG, to retain the phrase "if none, so state" to be reasonable and consistent with the provisions of Act 827.

Section 4. Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Preliminary Interconnection Site Review is true and correct.
Signature: _____ Date: _____

(No contested issues)

II. TERMS AND CONDITIONS

Section 1. Requirements for Request

For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to the requirement of Rule 2.06.B.4, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information,

Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

(No contested issues)

Section 2. Utility Review

Following submission of the Preliminary Interconnection Site Review Request by the customer the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs for conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

(No contested issues)

Section 3. Application to Exceed 300 kW Net-Metering Facility Size Limit

This Preliminary Interconnection Site Review Request and the results of the Electric Utility's review of the facility interconnection shall be filed with the Commission with the customer's application to exceed the 300 kW facility size limit pursuant to 2.06.B.4.

(No contested issues)

Section 4. Standard Interconnection Agreement

The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility

(No contested issues)

Net-Metering Tariff

X. NET-METERING

X.1. AVAILABILITY

X.1.1. To any residential or any other customer who takes service under standard rate schedule(s) _____ (list schedules) who ~~has installed~~ ~~owns~~is an owner of a Net-Metering Facility and has obtained a signed ~~a~~ Standard Interconnection Agreement for Net-Metering Facilities with ~~the~~ a Utility. The generating capacity of Net-Metering Facilities may not exceed the greater of: 1) twenty-five kilowatts (25 kW) or 2) one hundred percent (100%) of the Net-Metering Customer's highest monthly usage in the previous twelve (12) months for Residential Use. The generating capacity of Net-Metering Facilities may not exceed three hundred kilowatts (300 kW) for non-residential use unless otherwise allowed by the Commission. ~~Such facilities must be located on the customer's premise and~~Net-Metering is intended primarily to offset some or all of the customer's energy use.

The provisions of the customer's standard rate schedule are modified as specified herein.

Audubon Initial

Audubon recommends that the first sentence of Section X.1.1 of the Net-Metering Tariff be modified to ensure that the language is consistent with the wording in the definition of NMC. Audubon also recommends that the second and third sentences be removed because the limitations on generating are made abundantly clear in the NMRs. Audubon Initial at 17.

AECC Reply

AECC recommends that the requirement that "such facilities must be located on the customer's premise and…", which was removed from Staff's "strawman" in this section be reinserted in keeping with their argument previously stated that NMFs must have on-site generation by definition. AECC Reply at 11.

Staff Surreply

Staff accepts the modifications that Audubon recommends to the first sentence, as they are consistent with the definition of NMC. However, Staff recommends against

deleting the second and third sentences from the Net-Metering Tariff even though the generating capacity limitations may be abundantly clear in the NMRs, because the NMC may not have both the NMRs and the Net-Metering Tariff. Staff Surreply at 38.

For the reasons described in Staff's response to AECC to strike parenthetical "if none, so state," in Section 3 of Appendix A-1 Preliminary Interconnection Site Review Request, Staff continues to support its removal of the language requiring that the Net-Metering Facilities be located on the customer's premises. Staff Surreply at 39.

Commission Findings

The Commission accepts Staff's recommendations to modify the first sentence as suggested by Audubon and agrees with Staff that for clarification and the convenience of customers, Audubon's suggested deletions to the second and third sentences should not be accepted. The Commission accepts Staff's recommendation as conforming to the finding in Section 3 of Appendix A-1 Preliminary Interconnect Site Review Request *supra*, retaining the phrase "if none, so state."

X.1.2. Net-Metering Customers taking service under the provisions of this tariff may not simultaneously take service under the provisions of any other alternative source generation or co-generation tariff except as provided in the Net-Metering Rules.

(No contested issues)

X.2. MONTHLY BILLING

X.2.1. The Electric Utility shall separately meter, bill, and credit each Net-Metering Facility even if one (1) or more Net-Metering Facilities are under common ownership.

(No contested issues)

X.2.~~1~~2. On a monthly basis, the Net-Metering Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider schedules. Under Net-Metering, only the kilowatt hour (kWh) units of a customer's bill are ~~affected~~ netted.

(No contested issues)

X.2.~~2~~3. If the kWhs supplied by the Electric Utility exceeds the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility during the Billing Period, the Net-Metering Customer shall be billed for the net billable kWhs supplied by the Electric Utility in accordance with the rates and charges under the customer's standard rate schedule.

(No contested issues)

X.2.~~3~~4. If the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility during the Billing Period exceed 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.

(No contested issues)

X.2.~~4~~5. Net Excess Generation shall first be credited to the Net-Metering Customer's meter to which the Net-Metering Facility is physically attached (~~Designated~~Generation Meter).

(No contested issues)

X.2.~~5~~6. After application of X.2.~~4~~5 and upon request of the Net-Metering Customer pursuant to X.2.~~9~~8, 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.

(No contested issues)

X.2.~~6~~7. Net Excess Generation shall be credited as described in X.2.~~4~~5 and X.2.~~5~~6 during subsequent Billing Periods; the Net Excess Generation credit remaining in a Net-Metering Customer's account at the close of a~~n annual~~ billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely. For Net Excess Generation credits older than twenty-four (24) months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation credits in the Net-Metering Customer's account at the Electric Utility's estimated annual average cost rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least one hundred dollars ($100). An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation credit remaining in a Net-Metering Customer's account when the Net-Metering Customer: 1) ceases to be a customer of the Electric Utility; 2) ceases to operate the Net-Metering Facility; or transfers the Net-Metering Facility to another person.

~~, 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.~~

When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on is annual average avoided energy costs in the applicable Regional Transmission Organization for the current year.

If, after a 12-month Billing Cycle, it is found that a Net-Metering Customer generates Net Excess Generation Credits in each month of the 12-month Billing Cycle, the Electric Utility shall notify the Net-Metering Customer, in writing, that the Net Metering Facility is being operated in violation of state law and the Commission's Net Metering Rules. The Net-Metering Customer shall be given six monthly Billing Cycles to correct the violation. If, at the end of the six monthly Billing Cycles it is found that the Net-Metering Customer has generated Net Excess Generation Credits in each month of the six monthly Billing Cycles, the Electric Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.

~~X.2.7. Except as provided in X.2.6, any net excess generation credit remaining in a net-metering customer's account at the close of an annual billing cycle shall expire.~~

X.2.8. Upon request from a Net-Metering Customer an Electric Utility ~~may~~must apply Net Excess Generation to the Net-Metering Customer's Additional Meters provided that:

(a) The Net-Metering Customer must give at least 30 days' notice to the utility.

(b) The Additional Meter(s) must be identified at the time of the request. Additional Meter(s) ~~and must~~ shall be under common ownership~~in the net-metering customer's name,~~ within ~~the same utility service territory~~a single Electric Utility's service area;~~,~~ ~~and~~ shall be used to measure ~~only electricity used for~~ the Net-Metering Customer's requirements for electricity; may be in a different class of service than the ~~Designated~~Generation Meter; shall be assigned to one, and only one, ~~Designated~~Generation Meter; shall not be a ~~Designated~~Generation Meter; and shall not be associated with unmetered service.

(c) 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.

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

Audubon Initial

Audubon made three recommendations to Sections X.2.7 and X.2.8 of the Monthly Billing Section of Staff's recommended Tariff to mirror the language of the Tariff to the Rule. Audubon Initial at 17-18.

Staff Surreply

Staff agrees with first two of Audubon's conforming recommendations: (1) proposing a new provision in Section X.2.7 to state that when purchasing Net Excess Generation Credits from a NMC, the utility's payment should be based on its annual Avoided Costs in the applicable Regional Transmission Organization for the current year; and (2) proposing conforming language in Section X.2.8 to mirror the language of Net-Metering Rule 3.05.E, which states that, "Upon request from a Net-Metering Customer an Electric Utility must apply Net Excess Generation credits to the Net-Metering Customer's Additional Meters provided that. . . ." Staff agrees that the language should be the same in the rule and in the Tariff and replaces "may" with "must." Staff Surreply at 39-40.

Staff disagrees with Audubon's third recommendation, which opposes the addition of the requirement in Section X.2.8 that Additional Meters "shall be assigned to one, and only one, Designated Meter; shall not be a Designated Meter."[12] For the reasons described in the Definitions Section of the NMRs, Staff continues to support its proposed definition of Additional Meters.

Commission Findings

[12] The Commission notes that the term "Designated Meter" has now been changed in the Definitions Section and throughout this Order to "Generation Meter." This change was made at the suggestion of Audubon.

The Commission accepts Staff's recommendations to amend the Tariff as suggested by Audubon in its first two conforming recommendations. For the same reasons stated in the Definitions Section of the NMRs regarding Additional Meters, the Commission rejects Audubon's suggestion for revising the Tariff language and accepts Staff's recommendation adding the requirement that Additional Meters "shall be assigned to one, and only one Generation Meter; shall not be a Generation Meter."[13]

Further, the Commission deletes the last paragraph of Section X.2.7 consistent with its deletion in proposed Rule 2.05.D.5, upon which this section is based.

X.2.9. Any Renewable Energy Credit created as the result of electricity supplied by a Net-Metering Customer is the property of the Net-Metering Customer that generated the Renewable Energy Credit.

(No contested issues)

3. Grandfathering

In its Initial Comments, Staff raises the issue of grandfathering by stating that NMCs executing SIAs and taking service prior to the Commission's adoption of any new rate structure should continue to take service under the standard rate schedule for their class and not under any newly developed rate structure for NMCs. Other parties responded in various ways, some supporting and some opposing grandfathering.

At issue is whether existing NMCs will be grandfathered, that is, allowed to remain on the current NM rate structure[14] (assuming a new rate structure is adopted in Phase 2) and if so, under what conditions. The following questions were raised by the parties:

---

[13] *Id.*

[14] Currently, kWhs generated by a NMF are netted against kWhs supplied by the electric utility on a one-for-one basis.

- Should existing customers be grandfathered?
- If so, what is the cut-off date for separating those customers subject to the current rate structure, from those subject to any new rate structure?
- What has to happen by that cut-off date to allow a customer to be grandfathered under the existing rate structure?
- What time limit, if any, should be set on how long a customer remains grandfathered under the current rate structure? When should that time limit start?
- Should grandfathering attach to the individual customer or the NMF, even if it is later sold or transferred to another customer or relocated?
- What triggering event(s) would require grandfathered customers to switch to any new rate structure?
- Should all existing customers be grandfathered, including those who petition for permission to exceed the size limits set by statute?

POSITIONS OF THE PARTIES

Staff Initial Comments

Staff proposes that, if and when the Commission establishes a new net-metering rate structure in Phase 2 of this proceeding, service to NMCs under the current standard rate schedules would be limited to those NMCs existing at that time. Staff Initial Comments at 3. NMCs subscribing to service after that time would be served under the new NM rate structure. *Id.*

Staff notes that Act 827 does not prescribe new rate structures or modify the existing Standard Interconnection Agreement (SIA) signed by NMCs under the current

NMRs. *Id.* at 4-5. Rather, those NMCs continue to be served under existing rules until any new rate structures are set. *Id.* at 5.

Staff anticipates that the Commission will consider the property interests that existing NMCs obtained through material investments in reliance upon the terms of the Interconnection Agreement and existing rates, and sees no justification or public necessity to disturb those substantial interests. *Id.* Staff cites generally to the following authorities regarding the need to take into account property interests for existing NMCs: *Tankersley Bros. Indus., Inc. v. City of Fayetteville*, 227 Ark. 130, 296 S.W.2d 412 (1956), and *Smith v. City of Arkadelphia*, 336 Ark. 42, 984 S.W.2d 392 (1999). *See also*, *Arkansas Riverview Development, LLC v. City of Little Rock,* 2006 WL 2661158 (2006). *Id.* Staff indicates that its proposed grandfathering policy will provide certainty and clarity to existing and prospective NMCs during the development and approval by the Commission of any new rate structures, and thereby will not impair the continued growth of NM in Arkansas during that time. *Id.* at 5-6.

AAEA Reply Comments

AAEA urges that existing NMCs who add or subtract solar panels still be grandfathered. AAEA Reply Comments at 4. AAEA emphasizes that AREDA's underlying purpose is to support renewable energy through net-metering. AAEA also notes that Act 827 did not include an emergency clause. *Id.*

AECC Reply Comments

AECC argues that it would be bad policy to exempt certain customers from the ratemaking requirements of Act 827 because customers generally assume the risk of new rates and rate structures. AECC Reply Comments at 8. AECC states that the NMC's

risk is similar to that of a large industrial customer who invests in equipment, the value of which is impacted by changes in electric rates, such as a change in the way demand and capacity costs are recovered through billing determinants. *Id.* at 9. AECC also states that the legal question of whether Act 827 allows grandfathering is "thorny." *Id.* at 8. AECC alludes to the Commission's more general duty to fix just and reasonable rates, stating that, if the Commission determines that existing NM rate structures are not just and reasonable, then it should not continue those rate structures for existing customers. *Id.* at 9. AECC also suggests that such grandfathering would discriminate against new NMCs (who might face less favorable NM rate structures)—a suggestion with which SWEPCO agrees. *Id.*; SWEPCO Surreply Comments at 3.

AEEC Reply Comments

AEEC witness Mullins testifies that it is in the public interest for the Commission to implement Act 827 in a consistent manner for both new and existing NMFs. Mullins Direct at 3. He states that apart from the thorny legal question of whether Act 827 allows the Commission to exempt certain customers from its requirements, public utility customers are generally exposed to new rates and new rate structures all the time, even if investments are made based on prior rates. He notes that customers assume the prospect of a rate change when they invest in NMFs. *Id.* at 8.

Audubon Initial Comments

Audubon supports Staff's proposed treatment of existing NMCs. Audubon points out that existing NMCs have made investments to produce savings which would be undercut with unforeseen changes to the rate design. Audubon Initial Comments at 8-9. Audubon notes that California and South Carolina have grandfathered existing

customers but Nevada is the only state in the country to change NM without grandfathering existing NMCs.[15] Audubon cites controversy and continued legal challenges in Nevada as examples of the kind of regulatory risk and uncertainty that grandfathering should avoid. *Id*. at 9-10.

Ball Reply Comments

Mr. Ball states that for existing customers, there are contractual issues associated with unilaterally changing a contract between the utility and the customer. He says that NMCs currently considering investments should be free to proceed under existing rules. Mr. Ball emphasizes that AREDA authorizes the Commission to establish appropriate rates, terms, and conditions only "**after** notice and an opportunity for public comment." He indicates that customers currently considering investment in NMFs should be free to proceed under existing rules until the Commission reaches a final decision, and that otherwise the market will be chilled. Ball Preliminary Comments at (unnumbered) 4.

CECC Reply Comments

CECC states that it has the second-highest number (90) of NMCs of any utility and that they represent less than one-tenth of one percent of CECC's 94,700 customers. CECC Reply Comments at 1. CECC states that these customers have made significant investments, often both financial and otherwise, in their NMFs and that, like utility-scale power generation facilities, these customer investments are recovered over the inherently long useful lives of the assets. *Id*. at 1-2. CECC states that, in the case of such investments, altering the rules for cost recovery can be "economically crippling." *Id*. at 2.

[15] On September 21, 2016, after Audubon's comments were filed, the Public Utilities Commission of Nevada reversed itself and unanimously approved grandfathering for existing NMCs for 20 years. *See*, Docket No. 16-07028.

CECC supports Staff's approach, except that CECC notes that Act 827 includes new provisions expanding the potential capacity of NMFs for both residential and non-residential customers. *Id.* CECC believes that grandfathering existing NMCs is reasonable and fair, but that allowing existing NMCs also to participate in the new capacity provisions of Act 827 is not. *Id.* at 3.

CECC asserts that, while the Commission might consider grandfathering NMCs prior to the effective date of Act 827 (July 22, 2015) or the date on which this docket opened (April 29, 2016), the superlative date is June 15, 2016, which was the deadline for intervention in this docket. *Id.* CECC argues that the large number of intervention requests filed in this docket is evidence that interested parties have been put on notice. *Id.* CECC also reviews the number of new net-metering contracts added in its territory during 2014 (14), 2015 (16), the first quarter of 2016 (5), and the second quarter of 2016 (7), arguing that there is a pattern of gradual growth that provides evidence that uncertainty due to Act 827 has not and will not harm NM growth. *Id.* at 3-4. CECC urges the Commission to apply future rate methodologies at the same time as the effective date of the remaining provisions of Act 827 to ensure that current NMCs as well as additional NMCs established during this proceeding can receive the full benefits of either the NMRs prior to implementation of Act 827 or the expanded capacity thresholds in the new NMRs, but not both. *Id.* at 4.

Contreras Reply Comments

Mr. Contreras agrees with Staff's proposal to keep the current standard rate structure for existing customers. Contreras Reply Comments at 1.

EAI

EAI also generally supports Staff's principle that existing NMCs should be protected from rate structure changes that may arise from implementation of Act 827. EAI, however, proposes that grandfathering should extend only to those NMCs who have executed an interconnection agreement prior to the date of the Commission's Order in Phase I, rather than to all NMCs existing at the time any new tariffs take effect. EAI Reply Comments at 6.

EAI notes that AREDA directs the Commission to "establish appropriate rates, terms, and conditions for net-metering contracts." EAI states that it is reasonable to conclude that the "contract" referenced in AREDA is the NM interconnection agreement. EAI Reply Comments at 7. Like Staff and others, EAI notes that Act 827 does not specify whether new rates, terms, and conditions that may be adopted under its requirements should apply to interconnection agreements in effect prior to their adoption. *Id.* EAI argues that, because Act 827 is silent as to when the Commission should apply any new rates, terms, and conditions, the Commission may exercise reasonable discretion in determining the time to apply new rates to NMCs. *Id.* EAI asserts that this discretion should balance the Act's standards for the approval of NM rates with the obligation to promote customer-owned, distributed renewable energy generation and due process and notice for NMCs. *Id.* EAI proposes that grandfathering NMCs prior to the Commission's order in Phase 1 of this docket would give clear notice to all stakeholders that rate structures applicable to future NMCs may change as a result of Phase 2. *Id.* at 8-9.

Kelly Reply Comments

Mr. Kelly supports grandfathering existing NMCs because NMCs made their

investments based on the rules in effect at the time; changing the rules effectively shuts down any current, proposed, or future projects and subsequently thwarts development of distributed energy resources. Kelly Reply Comments at 3.

OG&E Reply Comments

OG&E does not object to Staff's proposed rules but states that Staff does not provide any rule language addressing grandfathering or indicating what type of action by the customer would constitute a "triggering event" resulting in applicability of a new rate structure. OG&E suggests these should be addressed in the final Rule but offers no proposed language. OG&E also proposes what it believes should be the triggering events that would reclassify the customer under the newly developed NM rate structure. According to OG&E, these events include, but are not limited to, the addition of a dependent meter (under meter aggregation), change in size of a NMF, change in ownership, and failure to notify the company of a modification. OG&E Reply Comments at 2.

Scenic Hill Reply Comments

Scenic Hill supports Staff's recommendation to grandfather service under the current standard rate structure to all NMCs existing prior to the adoption of a new rate. Scenic Hill believes the Commission should prevent potential NMCs from being in limbo while the NMWG is addressing rate questions. Scenic Hill Reply Comments at 6.

Sierra Reply Comments

Sierra Club supports Staff's recommendations on grandfathering and points to AREDA's statutory purposes of supporting economic development and energy independence through renewable energy development. Sierra Reply Comments at

(unnumbered) 1-2. Sierra Club adds that the harm of imposing new rate structures on the small number of existing NMCs would greatly exceed the negligible cost impact on other customers. *Id.* at 2.

Solar Energy Arkansas Initial[16] Comments

SEA supports Staff's proposed treatment of existing NMCs, noting that customers should be protected from unexpected changes in the tariff. SEA states that the current rate structure should be preserved for customers who interconnect until the Commission approves a new rate structure. SEA Initial Comments at 3.

SWEPCO Reply Comments

SWEPCO, citing Ark. Code Ann. § 23-18-604(b)(1)(A), argues that the statute appears to prohibit grandfathering of existing net-metering accounts because it clearly requires "each" NMC to pay the entire cost of providing service. SWEPCO Reply Comments at 4.

TASC Reply Comments

TASC agrees with Staff's proposal on grandfathering. Because of long-term customer investments, TASC urges that grandfathering should remain with the premises on which the NMF is installed for at least 20 years for any customer who submits an application to install a NMF prior to the effective date of any future NM-specific rate change. TASC Reply Comments at 6. TASC describes examples of other states in which regulators established grandfathering periods extending for 20 years (California, Arizona), South Carolina (more than 10 years), or indefinitely (Hawaii). *Id.* at 6-8.

Staff Surreply Comments

[16] SEA's Comments filed 8/19/16 were titled "Initial" although the procedural schedule called for "Reply" comments in this round.

Staff states in response to SWEPCO that the Commission must infer the intent of the legislature because Act 827 did not specifically address grandfathering. Staff Surreply Comments at 42. Staff states SWEPCO's interpretation of Act 827 might be correct if it were construed in a vacuum, but when read in consonance with AREDA's purpose of promoting net-metering to encourage the use of renewable energy, Staff's proposal provides policy certainty, the absence of which would inhibit construction of additional NMFs and undermine the very purpose of Act 827 and the state's net-metering policy. *Id.* at 43.

Staff states that it may be arguable that NMCs have a property interest that is protected by the Fourteenth Amendment of the US Constitution. *Id.* Staff notes that a statute should be construed so that it is constitutional, but also that it is best to construe a statute to avoid a constitutional question. *Id.* at 42 and 43. Staff concedes that existing NMCs normally do not have a property interest in rates, but states that, in analogous cases (such as issuance of building permits), a kind of property interest may be established. *Id.* at 44. Staff believes that existing NMCs acquired a kind of property right in reliance upon AREDA and its resulting rate structures at the time of installation, and that such a right is applicable to future statutory changes impacting rate structures, but not to general changes in utility rates, charges, or fees. *Id.* at 45. Staff states that if statutes impacting NMCs change in the future, the Commission should review at that time, *inter alia,* whether NMCs have spent substantial amounts in reliance upon existing rate structures. *Id.* at 45. Staff proposes new disclaimer language to notify NMCs of the possibility of future changes in rates, rules, and regulations, at the time of entering into a SIA. *Id.* at 46-47.

Staff agrees with OG&E that grandfathering rights should not extend in perpetuity, despite a change in circumstances. *Id.* at 47. Staff recommends that grandfathering should end with any change in circumstances which would require a new or amended SIA. *Id.* at 48. Staff recommends that electric utilities should be required to provide written notice to the grandfathered NMCs of the triggering event. Staff states that these proposals address AAEA's concerns regarding changes in the size of NMFs and TASC's proposal that grandfathering follow the premises rather than the customer. Staff states that grandfathering should not attach to the premises, but rather should be ended by execution of a new SIA. *Id.*

Staff responds to EAI's and CECC's proposals for different grandfathering dates that its proposal to establish the date of the Commission's order regarding proposed NM rates as the transition point will better promote the purpose of AREDA and is more consistent with AREDA, as amended by Act 827. *Id.* at 49. Staff also clarified at the public hearing that grandfathering could extend either from the date of the Commission's order in Phase 2 adopting new tariffs, or in the alternative, from the effective date of the tariffs themselves—that "either one would probably work." T. at 1235-1236. Staff argues that its proposal allows the NM working group twelve months to propose new rates while avoiding uncertainty for existing NMCs that would hamper NMF development. *Id.* Staff also states that its proposal is not, as suggested by AECC, unduly discriminatory because it serves the goals of the legislature, both for prior NMCs who invested in reliance on rate structures then in place, and for future NMCs who will invest based on the rate structures in place at that time. *Id.* at 50-51. Staff adds that the current record contains no evidence of cost-shifting and that any cost-shifting due to the

small number existing NMCs would be "statistically infinitesimal" and would not adversely affect other customers or the utilities. Staff states that such infinitesimal impacts would not be unduly discriminatory. *Id.* at 51.

AAEA Surreply Comments

AAEA states that none of OG&E's stated events should trigger removal of grandfathering, and that grandfathering should extend indefinitely. AAEA Surreply Comments at 2. AAEA opines, however, that there may be a case for imposing a penalty for failure to notify a utility of a change in size or modification, but that elimination of grandfathering should not be the penalty. *Id.* at 2-3. AAEA argues that NMCs have incurred substantial expense to install NMFs and that, as in the case of a utility-owned generation facility, the customer should be able to depend upon agreements and contracts that normally extend through the life of the facility. *Id.* at 3.

AAEA also invokes the Commission's general authority and duty to regulate every public utility and to do all things, whether specifically designated in its general authority, that may be necessary or expedient in the exercise of its powers; and its enumerated powers to determine reasonable, safe, adequate, and sufficient service and to ascertain and fix adequate and reasonable standards, regulations, and practices to be furnished, observed, and followed by any or all public utilities. *Id.* at 2.

AEEC Surreply Comments

AEEC responds to Staff's argument that there is no public necessity to disturb existing NM interconnection agreements that, to the extent that Act 827 requires modification of rates, it provides such a necessity. AEEC Surreply Testimony at 7. AEEC reiterates that NMCs assumed the risk of changes in rate design and should not

be given preferential treatment in comparison to other customers who invest in capital equipment. *Id.* AEEC argues that, to the degree that new rate designs are more just and reasonable or more consistent with statutory requirements, the reasonable foreseeability of such changes is not a reason to exempt customers from their application. *Id.* at 7-8. AEEC adds that solar project marketers are sophisticated enough to understand that rate design changes may change the economics of their projects and should have an obligation to inform customers of the associated risk. *Id.* at 8.

AEEC also argues that, in considering the question of grandfathering, the Commission should place less reliance on the examples in other states raised by TASC, and more on implementing Act 827's directives. *Id.* at 9. AEEC states that parties favoring grandfathering can appeal only to AREDA's general policy statements such as "increasing consumption of renewable resources promotes the wise use of Arkansas's natural energy resources," but can point to no specific provision allowing it. *Id.* AEEC also argues that grandfathering will not encourage development of any new renewable generation facilities, as any exemption would apply only to existing NMFs. *Id.* at 10.

AG Surreply Comments

The AG recommends the Commission adopt Staff's recommendation to grandfather existing and new NMCs up to the date of any change in rates or tariffs. Volkmann Surreply Testimony at 7.

Contreras Surreply Comments

Mr. Contreras notes that because of the low numbers of NMCs, grandfathering existing NMCs would have a negligible effect on the costs for other customers.

Contreras Surreply Comments at 2. He opposes OG&E's suggestion of triggering events which would void grandfathering. *Id*. at 2-3. He opposes EAI's proposal that grandfathering go into effect on April 29, 2016, and supports instead the date that a new rate is ordered. He asks that all NMCs be informed of a possible rate change in writing. *Id*. at 3-4. He agrees with the positions of AAEA, Audubon, TASC, SEA, Sierra, and Scenic Hill on grandfathering. *Id*. at 4-9.

Costner Surreply Comments

Ms. Costner supports Staff's recommendation to grandfather service under the current standard rate structure to all NMCs existing prior to the adoption of a new rate. Costner Surreply Comments at 6. She argues that failing to grandfather existing customers, as argued by SWEPCO, would be a retroactive application of the law. *Id*. at 7. Disagreeing with CECC, she states that any grandfathering date prior to the Commission's ruling in Phase 2 of this proceeding effectively would require existing NMCs to comply with rules that are not likely to be finalized before mid-2017. *Id*. at 8-9.

EAI Surreply Comments

EAI supports the concept of grandfathering existing NMCs as consistent with the Commission's goals and suggests an effective date of the order in Phase 1 of this Docket. EAI Surreply Comments at 2-3.

Kelly Surreply Comments

Mr. Kelly suggests that it would be contrary to contract law to not allow existing NMCs to maintain their existing agreements. Kelly Surreply Comments at 1.

OG&E Surreply Comments

OG&E initially appeared to support allowing existing NMCs to take service under the current SIA, but became persuaded by SWEPCO that grandfathering may conflict with the intent of Act 827. OG&E also opposes TASC's request for a 20-year grandfathering period and the extension of grandfathering to successor customers at a given location, arguing that these proposals are inconsistent with fair and reasonable rate making and contrary to statute. OG&E Surreply Comments at 3.

Scenic Hill Surreply Comments

Scenic Hill supports Staff's recommendations and opposes EAI's proposal to tie grandfathering to the date of a Phase 1 order in this docket, on the basis that it would leave a gap in time between Phase 1 and Phase 2 of this proceeding during which NMCs would not know the rate structure under which they would take service. Scenic Hill argues that this uncertainty would chill the renewable energy market that AREDA is intended to promote. Scenic Hill Surreply Comments at 1-2. Scenic Hill also disagrees with SWEPCO's position that grandfathering is prohibited by the statutes. *Id.* at 3.

Sierra Surreply Comments

Sierra notes that EAI's proposed effective date for grandfathering would create at least a year of significant uncertainty that would slow or stop the development of distributed generation resources. Sierra Surreply Comments at 5. Sierra responds to AECC that its example of rate changes potentially adversely affecting an industrial customer's investment in low load-factor equipment demonstrates the importance of the concept of gradualism in ratemaking. Sierra also argues that that the legislature, through AREDA, directed the Commission to promote renewable energy generation in the case of NMCs, but did not similarly promote low load-factor industrial equipment.

Id. at 5-6.

SWEPCO Surreply Comments

SWEPCO says it is unclear from some of the comments if the exemption being sought is for a change in the "rate" or in the "rate structure." SWEPCO Surreply Comments at 2-3. SWEPCO states that no customer is exempt from a change in a specific rate. SWEPCO notes that the existing NM tariff refers to the standard base service rate schedules. SWEPCO states that the statute does not dictate that the standard base service rate schedule has any type of grandfathering provision attached, even if it also applies to NMCs. SWEPCO agrees with AEEC that grandfathering would be discriminatory towards new NMCs and could result in cost-shifting to the other utility customers. *Id*. at 3.

SWEPCO opposes TASC's recommendation that grandfathering should extend for 20 years and should remain with the premises and not the customer or the utility account. *Id*. SWEPCO notes, in this regard, that the Standard Interconnection Agreement is with the customer and not the premises, and that the account number changes with a change in customer. *Id*.

SWEPCO states, further, that the premises cannot participate in aggregated meter arrangements between the designated meter and additional meters, because meter aggregation is based on common ownership under the customer, and not on the premises. *Id*. at 3-4. SWEPCO notes that AREDA defines "net-metering customer," not net-metering premises, and that under Staff's proposed rules, net excess generation shall (in certain circumstances) be purchased from the NMC after it ceases to operate the NMF or transfers it to another person, and does not pass to the premises. *Id*. at 4.

In response to the argument that the NMC's contract under the should not be disturbed, SWEPCO notes that Section 2 of the Standard Interconnection Agreement states that the parties to the agreement are governed by AREDA and the utility's standard tariffs. SWEPCO also argues that Section 10 of the SIA, which states that it remains in effect until "modified or terminated in accordance with its terms or applicable regulations or laws," puts NMCs on notice that it could be modified by changes in law. *Id.* SWEPCO states that it is arguable that the right of all NMCs to expect that they will remain under their existing rate structure is now void. *Id.* at 4-5.

SWEPCO also states that, should the Commission grandfather existing NMCs, it would consider the date on which the Commission approves new rate structures as the effective date to implement the new rate structure and the exemption. SWEPCO also states that any grandfathering should be limited to existing NMCs without expansion of their existing NMFs. *Id.* at 5.

TASC Surreply Comments

TASC supports EAI's endorsement of grandfathering in concept, but states that its proposal to tie grandfathering to the date on which Order No. 1 was issued in this proceeding creates uncertainty for customers between now and the date of any order in Phase 2 of this docket. TASC urges the Commission to establish a date certain before which a customer can obtain an interconnection agreement to secure grandfathering rights. TASC Surreply Comments at 2. TASC responds to SWEPCO that Act 827 contains a silence on grandfathering that should not be confused with a prohibition. TASC instead endorses EAI's interpretation that Act 827 accords the Commission reasonable discretion to reach reasonable and practical policy outcomes by

grandfathering existing NMCs. *Id*. at 4. TASC recommends that grandfathering rights be fully transferrable and assignable to subsequent premises owners to protect the expectation that the investment in an NMF enhances property value and disagrees with OG&E that grandfathering rights should be terminated by certain triggering events. *Id*.at 5.

Staff Public Hearing Testimony

Staff witness Brenske testifies that grandfathering should be in the tariff, where the existing tariff would close to new customers or be continued for existing customers and a new tariff would be created for new customers. T. 1235. She states that Staff supports using the date of the order in Phase 2, versus the tariff effective date, as the date for grandfathering because the customers need to be given notice that the rates are going to change, but that either would work. T. 1235-36. She agrees with EAI witness Owens that the action the customer would need to do by that date is to email or send the interconnection agreement. T. 1236. She says that the duration of grandfathering should be based on an individual existing system to reflect the expectations of the customer who invested in that system thinking that there would be a number of years of pay back, and that twenty years would be reasonable. T. 1237. Ms. Brenske affirms Staff's position that any time a new interconnection agreement would be required would trigger loss of grandfather status. She notes that there are two situations where a new interconnection agreement would be required: (1) a change in Section 2 for a modification of the system such that it operates differently, including when there is a new size or any other operating characteristic, and (2) a new customer. T. 1237-38. She agrees with EAI that the current interconnection agreement allows for assignment with

the utility's consent. T. 1238. She confirms Staff's position that grandfathering should not stay with the premises. T. 1240.

Ms. Brenske testifies that the disclaimer form proposed by Staff would notify the customer that rates or rate structure might change but could be grandfathered. She notes that rates and rate structures both change through time. T. 1240-41.

AAEA Public Hearing Testimony

Mr. Smith for AAEA testifies that California established a 20-year transition period for existing NMCs, considering both the useful life and the reasonable payback period of the system. The 20 years was based on each individual system. T. 538. He notes that Massachusetts grandfathered existing projects already connected to the grid for 25 years; Nevada approved a term for 20 years tied to the premises; Hawaii grandfathered customers indefinitely; and Arizona adopted a 20-year grandfather period for all NMFs with unlimited transfer of the grandfathering with the sale of the home. T. 539. He states that because of the currently small number of NMCs, AAEA would recommend an indefinite grandfathering period for existing customers, with the effective date of the new tariffs being the cut-off date for grandfathering. T. 540-41. He testifies that because small businesses and residential homeowners often start with a small NMF with the intent of upgrading, adding size/inverters might trigger a change in the interconnection agreement, as might subtracting size/inverters to avoid over-generation. He states that grandfathering should stay with the NMF and be indefinite. He states that he was unable to find in the interconnection agreement a list of events that would trigger a new interconnection agreement. T. 545-46.

AECC Public Hearing Testimony

On behalf of AECC, Daniel Riedel with First Electric states that Phase 2 of the Docket should decide how grandfathering fits into the new rate structure. T. 738. While AECC did not take a general position on grandfathering, AECC witness Chapman with Ashley-Chicot states that he liked the idea of a drop-dead date, citing its simplicity. T. 748.

Mr. Riedel testifies that part two, section five of the standard interconnection agreement requires a new interconnection agreement with any changes to section two of part one, which includes changes in the size of the system, the inverter brand, and the inverter size. T. 768.

AEEC Public Hearing Testimony

AEEC witness Mullins testifies that in the absence of legislation, it would fall within the Commission's authority to grandfather certain customers, such as is done in other states. T. 874. He states that there may be some slight differences in the costs and benefits of some of the old NMCs compared to new customers but would not say that they are large or material. T. 875. He opines that customers who are investing in larger projects such as Riceland are more sophisticated than "run of the mill" residential customers and they should bear a higher threshold when it comes to grandfathering, although demand charges result in less of a concern about cost shifting. T. 876-77.

AG Public Hearing Testimony

AG witness Volkmann testifies that it is preferable to have grandfathering tied to the useful life of the specific NM system. T. 979-80. He notes that the inverter is going to be replaced two or three times over the life of the system and that replacement should not trigger a new interconnection agreement. T. 980. He states that he agrees with the

concept of Staff's disclaimer language but that it might need "tweaking" in case compensation to customers for net-metering is increased instead of decreased. T. 981. He says that it is important for the customer to tell the utility if the size of the system changes but is not sure whether that should trigger a new interconnection agreement; it would depend on a combination of size and new capabilities that are being deployed. T. 985.

Audubon Public Hearing Testimony

On behalf of Audubon, Mr. Moody testifies that in California, each interconnection agreement is valid for twenty years from the date it goes into effect, which provides certainty of ample time to recoup the capital investment. He notes that because Arkansas is a low-rate state, a slightly longer period is justified, perhaps twenty-five years, which is the common warranty period on a lot of panels on the market today. However, when questioned about whether an interconnection agreement might lock in obsolete technology, he agrees that flexibility should be encouraged and the term of the interconnection agreement should not be changed so long as the capacity or nature of the NM facility does not change. T. 943-44.

Ball Public Hearing Testimony

Mr. Ball testifies that investors in NMFs look at the life cycle cost of their system and base their economic decision on how long the system is expected to produce power, including a consideration that this is a hedge against inflation if rates go up in the future. T. 434. When asked about the typical life of a NMF, he notes that early NMFs had a 25 year payback period but that today it is about 12 for residential. T. 436. He states that growth in solar is due to declining costs. T. 455.

Mr. Ball asserts that grandfathering should be tied to the NMF, not the customer, so that the value of the NMF is not diminished when a NMC sells property containing a NMF. T. 438. He agrees that there may be administrative or billing concerns if grandfathering is tied to the NMF, not the customer. T. 439. Concerning events which require a new interconnection agreement, he states that there was no new interconnection agreement when one NMF doubled its size, just an update showing the new information on the system. T. 453.

Costner Public Hearing Testimony

Ms. Costner testifies that if grandfathering has a limit, it would have a substantial impact on how she lives, perhaps forcing her to go off the grid. T. 432. Her concern is not connected to how long it takes to recoup her investment. T. 433.

Ms. Costner states that she has upgraded her system twice and had to sign a new interconnection agreement each time. T. 437, 452.

EAI Public Hearing Testimony

EAI witness Westmoreland testifies that depending on what the new rate structure looks like, the current NM rider may not have to be closed because of grandfathering. She suggests that grandfathering appear in both the rules and the tariffs. T. 739. EAI witness Owens suggested that a customer signing and submitting a valid interconnection agreement by the date of the order in Phase 1 should be grandfathered. T. 741. He points out that Staff's proposed disclosure form regarding grandfathering of all systems is patterned on the one developed for Arizona Public Service. T. 742

Mr. Owens also notes that Act 827 was passed in 2015 and took effect in July of

that year but that grandfathering back to that date would cause challenges for customers who did not know about the Act's passage. T. 743. . EAI also states that the future date of a resolution to Phase 2 of this proceeding is uncertain and might even take years. EAI therefore urges the Commission to establish a clear transition date, which it says should be the date of the Commission's Phase 1 order, with grandfathering applicable for customers who have signed an interconnection agreement. T. 743-46.

Mr. Owens restates EAI's position that the grandfathering date should start at the date of a Phase 1 order in this proceeding, for around 20 years. He states that the systems are long-life assets with warranties and presumed 20-year lives. T. 749. Given that customers have invested at different times, he testifies that tying eligibility to a date certain of 20 years into the future from the date of the order, rather than a customer-specific length, would be the cleanest and easiest method which balances all costs that a utility has to manage. T. 749-750.

Empire Public Hearing Testimony

Mr. Eichman, on behalf of Empire, testifies that assuming legal issues can be resolved, Empire would not have any objection to a phase in or phase out of subsidies through grandfathering. Empire has only one NMC in Arkansas. T. 733.

Mr. Eichman confirms that its Arkansas NMC has upgraded the NM system twice and executed a new interconnection agreement each time. He states that if an inverter is added or changed or if panels are added to an existing inverter, the customer is asked to sign a new interconnection agreement and the equipment is tested. T. 769.

Kelly Public Hearing Testimony

Mr. Kelly testifies that grandfathering should be in perpetuity, while Nevada

grandfathered through 2030. T. 536-37. He does not support the proposal that a change in ownership be a triggering event to end grandfathering. T. 537. He notes that he initially sized his solar array much smaller than he thought necessary, since net excess generation was forfeited at the time, and installed an array that was not the most efficient and had only half of the normal life. He plans to convert those panels to state-of-the-art panels which could more than double the output. T. 537-38.

Concerning the triggering events that would end grandfathering, Mr. Kelly testifies that grandfathering in perpetuity would be easiest for utilities and make their costs go down. He notes that if incentives for NM are added instead of additional fees, existing customers would miss out on those incentives. T. 543. However, he does not oppose this as he installed his system based on an earth stewardship perspective, not what the payback was. T. 558.

OG&E Public Hearing Testimony

OG&E witness Scott testifies that OG&E has grandfathering in Oklahoma but is indifferent on grandfathering in Arkansas as it only has eighteen NMCs. T. 736.

Sierra Public Hearing Testimony

Sierra witness Hooks testifies that there is a small number of NMCs, under five hundred with an aggregate capacity of about three MW, so grandfathering would have a small, negligible impact. He recommends that the Commission err on the side of fairness and grandfather current and interim customers. T. 938. He states that Sierra wants grandfathering to be as broad and as long as possible; if a bright line is drawn, it should be when the new tariff is in place. T. 939.

Scenic Hill Public Hearing Testimony

Mr. Halter on behalf of Scenic Hill testifies that reducing or eliminating the uncertainly that a potential purchaser of a NMF faces is the best policy outcome. T. 541-42. He thinks that the Commission should lean toward as much as possible a bias to encourage renewable energy. T. 542. Concerning triggering events, he opines that because utilities are best situated to bear the economic risk of changes, the utilities, not individual customers, should bear the financial risks from changes in net-metering. T. 544. He says that net-metering is now economic, whereas it was not four years ago, so NM should be encouraged and federal tax incentives obtained. T. 556-57.

SWEPCO Public Hearing Testimony

When asked why grandfathering would not be an appropriate rate, term, or condition under the statute, SWEPCO witness Brice testifies that the statute does not allow grandfathering because each customer must pay its cost of service to the utility; he agreed that this presupposes that the customer is not paying that entire cost now. T. 734-35.

Mr. Brice states that grandfathering would be accomplished by closing the existing tariff to new subscriptions, with those on the tariff at the time of the Commission decision remaining on that tariff, and then a second tariff would be offered for NMCs going forward. T. 737.

Walmart Public Hearing Testimony

Walmart's witness Tillman testifies that evaluating a project involves looking at the rate structure and the expectations of the future changes within that rate structure, but states that customers do not know how to analyze a change in rate structure in terms of the economic cost and/or benefits. T. 877.

Commission Findings

The need for grandfathering is premised on the assumption that the Commission will establish a new rate structure in Phase 2 of this Docket, resulting in a desire by existing customers to remain on the current NM rate structure. Therefore, the following findings are made in the event a new NM rate structure is adopted in Phase 2. However, the Commission will not pre-judge any positions on a new NM rate structure and makes no findings in this Order on whether a new NM rate structure should be adopted or, if it is, the details of that new rate structure.

The Commission finds that NMCs who have submitted a Standard Interconnection Agreement to the utility before the date of an order, if any, in Phase 2 which adopts a new NM rate structure should be grandfathered under the current rate structure for a period of twenty years. The twenty years will be measured from the date of said order in Phase 2. Grandfathering will be tied to the NMF, not the customer, which will allow the customer to transfer the premises containing the NMF to a new customer with the new customer being eligible for grandfathering for the remainder of the twenty-year term.

Should existing customers be grandfathered?

The Commission finds that the use of grandfathering allows for phase-in of any new rate structure and appropriately transitions customers to any new NM rate structure. This ruling provides a fair, stable, and predictable cost environment, which creates certainty for existing NMCs and for the market until new tariffs are established, and clarity and simplicity for all parties thereafter. It also appropriately balances the interests of existing NMCs, potential NMCs, and other utility customers, along with the

interests of the utility.

The Commission agrees that the general intent of AREDA is to promote the development of renewable energy NM, and that a long period of uncertainty would chill such development. Within that general directive, AREDA authorizes, and indeed requires, the Commission to "establish appropriate rates, terms, and conditions for net-metering contracts . . . ." Act 827 amended this authority to establish rates, terms, and conditions that are "appropriate" by specifying that it includes a requirement that "rates charged to each net-metering customer recover the electric utility's entire cost of providing service to each net-metering customer within each of the electric utility's class of customers." As noted by several parties, Act 827 does not prescribe a particular structure for net-metering rates or specifically require an increase in rates; nor does it establish a timeline for implementation.

The Commission finds that a period of advance notice to customers commensurate with the useful life of the assets in question (but also balancing questions of administrative efficiency and fairness to all ratepayers) is essential in implementing a statute which has the fundamental purpose of incenting customer investment in such assets. The Commission finds that adoption of a grandfathering period to provide such notice and to promote certainty in the market for NMFs need not conflict with Act 827's requirement that "each" NMC pay its entire cost of service. In Phase 2 of this proceeding, the Commission may or may not determine that a new rate structure is necessary. Agreement may be reached quickly by the parties, or it may require a longer period or be further adjusted in future years. Under any of these scenarios, a grandfathering period beginning with the date of any order, if any, adopting a new rate

structure in Phase 2 and ending with a "drop-dead date" 20 years later ensures that each NMC will transition to any new rate structure adopted by the Commission. In any event, for customers who submit SIAs prior to the adoption of any new rate structure as discussed above, this grandfathering is an appropriate term or condition under Ark. Code Ann. § 23-18-604(b)(1) that furthers the purposes of AREDA, as amended by Act 827. Determining the time to apply new rate structures to NMCs is an appropriate exercise of the Commission's discretion as it balances AREDA's directives with concerns raised for existing NMCs. Because of the small number of existing NMCs, grandfathering should have minimal effect on other customers.

This approach comports with the Commission's general duty to fix just and reasonable rates, and it comports with common ratemaking principles, which include gradualism in the introduction of new policies that affect specific ratepayers or classes of ratepayers.

This approach does not, as some parties suggest, constitute undue discrimination in the implementation of rates. Rather, it is a reasonable distinction among customers who face materially different market and legal conditions over time. Any distinction among NMCs that may arise from this decision is reasonably based upon fairness to NMCs who have signed and submitted a Standard Interconnection Agreement prior to establishment of any new rate structures, upon the different circumstances that face earlier and later investors in generating technologies, and upon changing legislative directives. This also recognizes that existing NMCs made material investments in reliance on the terms of the Standard Interconnection Agreement and existing rate structures. With regard to ratepayers in general, this approach appropriately considers

evidence of the minor impact of current NMCs on other ratepayers and the adverse impacts on NMCs of not adopting a grandfathering period.

Because the statute, properly construed, allows grandfathering, the Commission need not address the issue of whether it is constitutionally compelled.

It is reasonable to grandfather both customers who have already made substantial investments in their NMF under the existing rate structure and those seeking to become NMCs during a period of uncertainty instituted by the General Assembly with the passage of Act 827, by the Commission with the opening of this docket, and in part by a Joint Motion supported by every party in this docket to extend the procedural schedule in this docket by a year to investigate new rate structures. As a consequence, grandfathering is consistent with, and does not violate, Ark. Code Ann. § 23-18-604.

If so, what is the cut-off date for separating those customers subject to the current rate structure, from those subject to any new rate structure?

The Commission finds that the most reasonable date to use for grandfathering is the date of the order, if any, in Phase 2 which adopts a new NM rate structure. Earlier dates suggested by some parties[17] leave an unacceptable period of uncertainty for NMCs as changes to the rate structure, if any, will not be announced until the conclusion of Phase 2. In that case, NMCs would be unable to make an informed decision on whether installation of a NMF would be justified or economic since the rate structure would be unknown. Until a new rate structure, if any, is announced in the Phase 2 order, NMCs will have the certainty of the current rate structure when evaluating whether to install a

[17] For example, the effective date of Act 827, the date this Docket opened, the date of the October 4, 2016, hearing, or the date of this order.

NMF. Although there will be a short period between that order and the date(s) of approval of any new NM tariffs implementing that order, the time should be minimal and any rate structure changes will have already been announced by the order; in addition, the period may aid in an orderly transition to the new tariffs. It is administratively efficient to use one date for all utilities to determine which customers will be grandfathered. If the Commission were to instead to use the date(s) the implementing tariffs are approved, this could involve multiple dates, resulting in non-uniformity among utilities.

In addition, that order date will determine the start of the twenty-year grandfather period. Although it is possible to tie that period to the date of interconnection of each individual NMF, using the order date is more administratively efficient for the utilities and the Commission. Otherwise, each utility would have to keep up with a specific date for each NMF. The grandfather period for all customers will therefore begin – and end – on the same dates.

What has to happen by that cut-off date to allow a customer to be grandfathered under the existing rate structure?

The Commission finds that to be grandfathered under the existing rate structure, a customer must have submitted a signed Standard Interconnection Agreement to the appropriate utility on or before the date of the order, if any, in Phase 2 adopting the new rate structure. The utility need not have approved and signed the Standard Interconnection Agreement by that date; therefore, the customer will not be adversely impacted if the utility delays approving and signing the Standard Interconnection Agreement for whatever reason.

What time limit, if any, should be set on how long a customer remains grandfathered

under the current rate structure?

The parties' suggestions for a period of grandfathering range from a defined period of years to perpetual grandfathering of existing NMCs, with twenty to twenty-five years as a common proposal. Grandfathering terms are usually based on the typical useful life of the NMF, the typical time needed to recoup the capital investment (the payback period), and/or the common warranty period for NMFs. The testimony is that early NMFs had a 25 year payback, but today the payback is about 12 years for residential NMFs. Evidence also supports a 20-year life for NMFs and a common warranty period of 25 years.

The Commission adopts a grandfathering term of twenty years. Twenty years considers the impact on existing NMCs by taking into account the useful lives of NMFs, reasonable payback periods, and warranty periods. The term also appropriately balances the impact to other customers. The Commission finds no justification for grandfathering for an unlimited term.

Should grandfathering be tied to the customer or the NMF, even if it is later sold or transferred to another customer or relocated?

The Commission further determines that the grandfathering period should attach to the NMF on the premises rather than the customer. In other words, if a customer sells a premise with a NMF, the Standard Interconnection Agreement may be transferred to the new customer and the grandfather period should continue for the remainder of the term, assuming no other triggering event occurs. Tying the grandfather period to the NMF instead of the customer means that the value of the NMF

is not diminished when a NMC sells or transfers property containing a NMF.[18] It also means that the system installation costs may be recovered on the terms expected when the system was purchased. Therefore, the NMF will remain eligible for the grandfather period if the premise is transferred to a new owner or utility account at the original premises.[19]

What triggering event(s) would require grandfathered customers to switch to any new rate structure?

The comments of the parties run the gamut on triggering events. Some suggest that there should be no event which ends the grandfather period and requires the customer to take NM service under any new rate schedule. Others suggest that triggering events should include the signing of a new or amended SIA, upgrades, additional meters, or failure to notify the utility of a modification.[20]

Among the parties, there is disagreement on what event requires a new or amended SIA. Staff testifies that a new Standard Interconnection Agreement is required in two events: (1) a change in Section 2 for a modification of the system such that it operates differently, including when there is a new size or any other operating characteristic, and (2) a new customer; however, Staff agrees that the current interconnection agreement allows for assignment with the utility's consent. AECC states that a new Standard Interconnection Agreement is required with any changes to section two of part one, which includes changes in the size of the system, the inverter brand,

[18] This could happen with the outright sale of the property, the death of the customer and inheritance by an heir, divorce of a customer and transfer to the former spouse, or several other circumstances.
[19] Although not raised by the parties, the Commission finds that it would not be reasonable to allow a customer to transfer a NMF to a new premises or location and continue to operate under the grandfather period. Such an event would constitute a substantial change in the interconnection agreement and the facts under which the customer invested in the NMF, sufficient to defeat the reasons for grandfathering.
[20] Under Part II, Section 4 of the SIA, a customer must provide notice of modifications or changes to a NMF before being made.

and the inverter size. Mr. Ball says that no new interconnection agreement was required when a NMF doubled in size, just an update showing the new information on the system. Ms. Costner states that she had to sign a new Standard Interconnection Agreement each of the two times she upgraded her system. Empire commented that a customer would be asked to sign a new Standard Interconnection Agreement if the inverter changed or a panel was added to the existing inverter, noting that its one NMC upgraded its system twice and executed a new Standard Interconnection Agreement each time.

Because of the apparent inconsistencies in when a new or amended Standard Interconnection Agreement is required, using this event as a triggering event to end grandfathering is problematic and should not be adopted. The Commission finds that maintenance and repair of existing NM systems should not be a triggering event which ends the grandfather period. This might discourage maintenance and repair of systems. Similarly, it is reasonable to allow replacement and repair of systems parts with comparable parts, even if those parts increase a system's output due to increases in the efficiency of the equipment or other technological changes. The Commission likewise finds no need to discourage upgrades to a NMF so long as the NMF still falls under the statutory definition. For the small amount of customers who will be grandfathered, the statutory definition of NMF which limits it to offsetting part of all of the NMC requirements for electricity provides a built-in cap on improvements and repairs to a NMF.

Should all existing customers be grandfathered, including those who petition for permission to exceed the size limits set by statute?

Finally, some parties have raised the issue of whether NMCs who have obtained a

waiver pursuant to Ark. Code Ann. § 23-18-604(b)(5) or (7), before the date of any order in Phase 2 establishing a new rate structure, to exceed the limits set by Ark. Code Ann. § 23-18-603(6) (referred to herein as Waivers) should be grandfathered. Possible options are to grandfather all Waivers, grandfather Waivers on a case-by-case basis as their Waivers are addressed, or require all Waivers to transfer to the new rate structure. The Commission finds that because Waivers by definition are to exceed statutory limits, and because larger NMFs potentially have more effects (costs or benefits to other customers) on the system, each request for a Waiver should individually address whether it is in the public interest for that Waiver to be grandfathered, to the extent it meets all other criteria for grandfathering.

Although the Commission is adopting grandfathering for certain customers at this time, the Commission notes that this ruling is made on the facts presented at this time and is not to be considered precedent for any request in the future to grandfather customers for any subsequent rate structure changes, if and when the issue arises again. The Commission will make such a determination on the facts presented at that time.

4. Additional Commission Findings

In addition to the changes made as described herein, the Commission has made minor changes to formatting to make the NMRs internally consistent and consistent with other Commission rules, all as shown on the marked-up copy in Attachment A.

The Commission finds that newspaper notice of this Rulemaking has been published pursuant to Rule 2.03 of the Commission's RPPs. The Commission further finds that the Arkansas Legislative Council and the Joint Interim Committee on Insurance and Commerce of the Arkansas General Assembly have been notified of this

rulemaking proceeding in the manner prescribed by law. The Commission also finds that the Governor of Arkansas has been notified of and approved the NMRs as proposed, in accordance with Executive Order 15-02.

Having reviewed and considered the Parties' written comments and testimony and the oral testimony provided by the parties during the public evidentiary hearing, the Commission finds that the NMRs as set out in Attachment B to this Order are just and reasonable and will serve to ensure the orderly administration of matters and proceedings before the Commission, and thus are in the public interest. Therefore, the Commission adopts the NMRs as set in Attachment B to this Order. Attachment B is the "clean" copy of the final NMRs adopted herein. Attachment A is a black-line markup copy of the NMRs , which shows Staff's proposed modifications to the NMRs that were included as Attachment 1 to Staff's Surreply Comments and the changes adopted by this Order.

5. Commission Ruling and Order

Accordingly, the Commission orders and directs as follows:

1. The NMRs as set out in Attachment B to this Order are reasonable, appropriate, and in the public interest and are hereby adopted to be effective upon review and approval by the Governor and the Arkansas Legislative Council.

2. The Secretary of the Commission is directed to prepare and make all filings as required by law and Rule 2.04 of the Commission's RPPs with the Governor, the Arkansas Legislative Council, Arkansas Secretary of State, and the Arkansas State Library.

3. Staff is hereby directed to file in this Docket a letter or other

documentation reflecting the dates of approval by the Governor and the Arkansas General Assembly, and the Secretary of the Commission shall note that the date of the latter of these two approvals is the effective date of the NMRs.

4. The Commission hereby transfers consideration of the adoption of best practices for interconnection to Docket No. 16-028-U for further consideration.

BY ORDER OF THE COMMISSION.

This 8th day of March, 2017.

Ted J. Thomas, Chairman

Elana C. Wills, Commissioner

Kimberly A. O'Guinn, Commissioner

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
X Electronic mail using the email address of each party as indicated in the official docket file.

Michael Sappington, Secretary of the Commission

ARKANSAS
PUBLIC SERVICE COMMISSION

NET--METERING RULES

Last Revised: March xx, 2017
Order No. xx
Docket No. 16-027-R
Effective : xx-xx-2017

NET-METERING RULES

ADMINISTRATIVE HISTORY

Docket	Date	Order No.	Subject Matter of Docket/ Order
02-046-R	07/26/02	4	Adopted rules relating to the terms and conditions of net metering.
06-105-U	11/27/07	8	Amended definitions; Rules 1.02, 2.01, and 2.04; Section 1 of the Standard Interconnection Agreement, Appendix A; and X.1.1, X.2.3, and X.2.4 of the Net-Metering Tariff, Appendix B.
	11/29/07	10	Amended Rule 4.02 to delete reference to Docket No. 86-033-A.
	11/30/07	11	Amended the Standard Interconnection Agreement, Appendix A to add e-mail address lines to the signature block.
	12/19/07	12	Errata order correcting clerical errors in the amendments adopted in Order No. 8.
12-001-R	06/15/12	6	Amended Section 7 of the Standard Interconnection Agreement, Appendix A to exempt state governmental agencies and entities, local governmental entities, and federal entities from the indemnity requirement.
12-060-R	09/03/13	7	Amended Rule 2.04 to provide for meter aggregation, incorporated the provisions of Act 1221 of 2013 concerning the carryover of net-metering credits, and added a definition of net metering customer to track the definition in Ark. Code Ann. § 23-18-603.
	10/11/13	10	Updated the Net-Metering Tariff to reflect the amendments adopted in Order No. 7.
16-027-R	xx/xx/17	XX	Revised Rules to comply with Act 827 of 2015.

NET--METERING RULES

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~~DEFINITIONS~~ SECTION 1. GENERAL PROVISIONS

Rule 1.01 Definitions

The following definitions shall apply throughout the Net-Metering Rules (NMRs) except as otherwise required by the context, and any references to the NMRs shall include these definitions:

(a) Additional Meter

A meter associated with the Net-Metering Customer's account that the Net-Metering Customer may credit with Net Excess Generation from the ~~Designated~~ Generation Meter. Additional Meter(s): 1) shall be under common ownership within a single Electric Utility's service area; 2) shall be used to measure the Net-Metering Customer's requirements for electricity; 3) may be in a different class of service than the ~~Designated~~ Generation Meter; 4) shall be assigned to one, and only one, ~~Designated~~ Generation Meter; 5) shall not be a ~~Designated~~Generation Meter; and 6) shall not be associated with unmetered service.

(b) Annual ~~b~~Billing ~~c~~Cycle

The normal annual fiscal accounting period used by the utility.

(c) Avoided Costs

~~The costs to an Electric Utility of electric energy or capacity, or both, that, but for the purchase from the **Q**qualifying **F**facility or **Q**qualifying **F**facilities, the utility would generate itself or purchase from another source. Avoided Costs shall be determined under Ark. Code Ann. § 23-3-704. 23-18-604(c)(1).~~ **As defined in Ark. Code Ann. § 23-18-604(c).**

(d) Billing ~~p~~Period

The billing period for net~~-~~-metering will be the same as the billing period under the customer's applicable standard rate schedule.

(e) Biomass Resource~~facility~~

A ~~facility~~ resource that may use one or more organic fuel sources that can either be processed into synthetic fuels or burned directly to produce steam or electricity, provided that the resources are renewable, environmentally sustainable in their production and use, and the process of conversion to electricity results in a net environmental benefit. This includes, but is not limited to, dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, and other accepted organic, renewable waste materials.

(f) Commission

The Arkansas Public Service Commission.

(g) Electric ~~u~~Utility

A public or investor-owned utility, an electric cooperative, municipal utility, or any private power supplier or marketer that is engaged in the business of supplying electric energy to the ultimate customer or any customer class within the state.

(h) Fuel ~~c~~Cell Resource~~facility~~

A ~~facility~~ resource that converts the chemical energy of a fuel directly to direct current electricity without intermediate combustion or thermal cycles.

(i) ~~Designated~~Generation Meter

The meter associated with the Net-Metering Customer's account to which the Net-Metering Facility is physically attached.

(j) Geothermal Resource~~facility~~

A~~n electric generating facility~~ resource in which the prime mover is a steam turbine. The steam is generated in the earth by heat from the earth's magma.

(k) Hydroelectric Resource~~facility~~

A~~n electric generating facility~~ resource in which the prime mover is a water wheel. The water wheel is driven by falling water.

(l) Micro ~~t~~Turbine Resource~~facility~~

A ~~facility~~ resource that uses a small combustion turbine to produce electricity.

(m) Net ~~e~~Excess ~~g~~Generation

~~The amount of electricity that a nNet- mMetering cCustomer has fed back to the eElectric uUtility that exceeds the amount of electricity used by that customer during the applicable period.~~**As defined in Ark. Code Ann. § 23-18-603(3).**

(n) Net Excess Generation Credits

Uncredited customer generated kilowatt hours remaining in a Net-Metering Customer's account at the close of a Billing Period to be credited, or, pursuant to Rule 2.05, purchased by the utility in a future billing period.

(o) Net~~- m~~Metering

~~Measuring the difference between electricity supplied by an eElectric uUtility and the electricity generated by a nNet- mMetering customer and fed back to the eElectric uUtility over the applicable bBilling pPeriod.~~ **As defined in Ark. Code Ann. § 23-18-603(4).**

(p) Net-~~m~~Metering ~~c~~Customer

~~An owner of a n~~Net ~~m~~Metering f~~F~~acility. **As defined in Ark. Code Ann. § 23-18-603(5).**

(q) Net- ~~m~~Metering ~~f~~Facility

~~A facility for the production of electrical energy that:~~

~~A. Uses s~~Solar, ~~w~~Wind, ~~h~~Hydroelectric, ~~g~~Geothermal, or ~~b~~Biomass resources to ~~generate electricity including, but not limited to, f~~Fuel ~~c~~Cells and ~~m~~Micro ~~t~~Turbines ~~that generate electricity if the fuel source is entirely derived from renewable resources, or as otherwise allowed by the Commission under Ark. Code Ann. § 23-18-604(b)(4); and,~~

~~B. Has a generating capacity of not more than: twenty-five (25) kilowatts for residential use or three hundred (300) kilowatts for any other use; and,~~

~~1. the greater of twenty-five kilowatts (25 kW) or one hundred percent (100%) of the Net Metering Customer's highest monthly usage in the previous twelve (12) months for Residential Use;~~

~~or~~

~~2. three hundred kilowatts (300 kW) for any other use unless otherwise allowed by a Commission under Ark. Code Ann. § 23-18-604(b)(5) and (7); and,~~

~~C. Is located in Arkansas; and,~~

~~D. Can operate in parallel with an e~~Electric ~~u~~Utility's ~~existing transmission and distribution facilities; and,~~

~~E. Is intended primarily to offset part or all of the n~~Net ~~m~~Metering ~~c~~Customer ~~requirements for electricity.; or,Is designated by the Commission as eligible for net metering service pursuant to Ark. Code Ann. 23-18-604(b)(4).~~**As defined in Ark. Code Ann. § 23-18-603(6).**

(r) Parallel ~~o~~Operation

The operation of on-site generation by a customer while the customer is connected to the Electric ~~u~~Utility's distribution system.

(s) Qualifying Facility

~~A cogeneration facility or a small power production facility that is a qualifying facility under Section 2 of the Commission's Cogeneration Rules.~~**As defined in Ark. Code Ann. § 23-3-702(4).**

(t) Renewable ~~e~~Energy ~~c~~Credit

~~The environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour generated from renewable fuels that can be sold or traded separately~~. **As defined in Ark. Code Ann. § 23-18-603(7).**

(u) Residential Use ~~customer~~

~~A customer s~~Serviceed provided under ~~a utility's~~an Electric Utility's standard rate schedules applicable to residential service.

(v) Solar Resource~~facility~~

A ~~facility~~ resource in which electricity is generated through the collection, transfer and/or storage of the sun's heat or light.

(w) Wind Resource~~facility~~

A ~~facility~~ resource in which an electric generator is powered by a wind-driven turbine.

~~SECTION 1. GENERAL PROVISIONS~~

Rule 1.0~~2~~1 Purpose

The purpose of these Net-Metering Rules is to establish rules for net energy metering and interconnection.

Rule 1.0~~3~~2 Statutory Provisions

A. These Rules are developed pursuant to the Arkansas Renewable Energy Development Act of 2001 (~~A.C.A.~~Ark. Code Ann. § 23-18-***601 et seq.*** ~~603 and § 23-18-604~~ as amended ~~by Act 1024 of 2007~~ and ~~Act 827 of 2015~~.)

B. These Rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304 (a)(3), and 23-2-305.

C. Nothing in these Rules shall govern, limit, or restrict the Commission's authority under Ark. Code Ann. § 23-18-604.

Rule 1.0~~4~~3 Other Provisions

A. These Rules apply to all ~~e~~Electric ~~u~~Utilities, as defined in these Rules, that are jurisdictional to the Commission.

B. The Net-~~-~~Metering Rules are not intended to, and do not affect or replace any Commission approved general service regulation, policy, procedure, rule, or service application of any utility which addresses items other than those covered in these Rules.

C. Net- mMetering cCustomers taking service under the provisions of the Net- Metering Tariff may not simultaneously take service under the provisions of any other alternative source generation or cogeneration tariffs except as provided herein.

SECTION 2. NET--METERING REQUIREMENTS

Rule 2.01 Electric Utility Requirements

An ~~e~~Electric ~~u~~Utility shall allow ~~n~~Net-~~m~~Metering ~~f~~Facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.

Rule 2.02 Metering Requirements

A. Metering equipment shall be installed to both accurately measure the electricity supplied by the ~~e~~Electric ~~u~~Utility to each ~~n~~Net-~~m~~Metering ~~c~~Customer and also to accurately measure the electricity generated by each ~~n~~Net-~~m~~Metering ~~c~~Customer that is fed back to the E~~e~~lectric ~~u~~Utility over the applicable ~~b~~Billing ~~p~~Period. If nonstandard metering equipment is required, the customer is responsible for the cost differential between the required metering equipment and the utility's standard metering equipment for the customer's current rate schedule.

B. Accuracy requirements for a meter operating in both forward and reverse registration modes shall be as defined in the Commission's Special Rules - Electric. A test to determine compliance with this accuracy requirement shall be made by the Electric ~~u~~Utility either before or at the time the ~~n~~Net-~~m~~Metering ~~f~~Facility is placed in operation in accordance with these Rules.

~~Rule 2.03 Cost to Provide Service~~

~~Following notice and opportunity for public comment, the Commission shall establish appropriate rates, terms, and conditions for Net-Metering contracts including the requirement that the rates charged to each Net-Metering Customer recover the Electric Utility's entire cost of providing service to each Net-Metering Customer within each of the Electric Utility's class of customers. The Electric Utility's entire cost of providing service to each Net-Metering Customer within each of the Electric Utility's class of customers:~~

~~1. includes without limitation any quantifiable additional cost associated with the Net-Metering Customer's use of the Electric Utility's capacity, distribution system, or transmission system and any effect on the Electric Utility's reliability; and~~

~~2. is net of any quantifiable benefits associated with the interconnection with and providing service to the Net-Metering Customer, including without limitation benefits to the Electric Utility's capacity, reliability, distribution system, or transmission system.~~

Rule ~~2.034~~ 2.03 New or Additional Charges

~~**A.**~~ Any new or additional charge which~~that~~ would increase a ~~n~~Net-~~ m~~Metering ~~c~~Customer's costs beyond those of other customers in the rate class shall be filed by the ~~e~~Electric ~~u~~Utility with the Commission for approval. The filing shall be supported by the cost/benefit analysis described in ~~Rule 3~~2.034.~~B.~~**Ark. Code Ann. § 23-18-604(b)(2).**

~~**B. Following notice and opportunity for public comment, the Commission may authorize an eElectric uUtility to assess a nNet- mMetering cCustomer a greater fee or charge, of any type, if the eElectric uUtility's direct costs of interconnection and administration of nNet-mMetering outweigh the distribution system, environmental and public policy benefits of allocating the costs among the eElectric uUtility's entire customer base.**~~

Rule ~~2.05~~ 2.04- Billing for Net--Metering

~~**A. The Electric Utility shall separately meter, bill, and credit each Net-Metering Facility even if one (1) or more Net-Metering Facilities are under common ownership.**~~

A. On a monthly basis, the ~~n~~Net-~~ m~~Metering ~~c~~Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider schedules. Under ~~n~~Net-~~ m~~Metering, only the kilowatt hour (kWh) units of a customer's bill are ~~affected~~netted.

B. If the kWhs supplied by the ~~e~~Electric ~~u~~Utility exceeds the kWhs generated by the ~~n~~Net-~~m~~Metering ~~f~~Facility and fed back to the ~~e~~Electric ~~u~~Utility during the ~~b~~Billing ~~p~~Period, the ~~n~~Net-~~ m~~Metering ~~c~~Customer shall be billed for the net kWhs supplied by the ~~e~~Electric ~~u~~Utility in accordance with the rates and charges under the customer's standard rate schedule.

C. If the kWhs generated by the ~~n~~Net-~~ m~~Metering ~~f~~Facility and fed back to the ~~e~~Electric ~~u~~Utility exceed the kWhs supplied by the ~~e~~Electric ~~u~~Utility to the ~~n~~Net-~~ m~~Metering ~~c~~Customer during the applicable ~~b~~Billing ~~p~~Period, the utility shall credit the ~~n~~Net-~~m~~Metering ~~c~~Customer with any accumulated ~~n~~Net ~~e~~Excess ~~g~~Generation in the next applicable ~~b~~Billing ~~p~~Period.

1. Net ~~e~~Excess ~~g~~Generation shall first be credited to the ~~n~~Net-~~m~~Metering ~~c~~Customer's ~~meter to which the net-metering facility is physically attached (d~~Designated~~Generation~~ ~~m~~Meter~~)~~.

2. After application of subdivision ~~(C~~D.~~)(~~1.~~)~~ and upon request of the ~~n~~Net-~~m~~Metering ~~c~~Customer pursuant to subsection ~~(D~~E.~~)~~, any remaining ~~n~~Net ~~e~~Excess ~~g~~Generation shall be credited to one or more of the ~~n~~Net-~~m~~Metering ~~c~~Customer's ~~meters (a~~Additional ~~m~~Meters~~)~~ in the rank order provided by the customer.

3. Net ~~e~~Excess ~~g~~Generation shall be credited as described in subdivisions (~~C~~D)(1) and (~~C~~D)(2) during subsequent ~~b~~Billing ~~p~~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.~~ Net Excess Generation Credits remaining in a Net-Metering Customer's account at the close of a Billing Period shall not expire and shall be carried forward to subsequent Billing Periods indefinitely.

   a. For Net Excess Generation Credits older than 24 months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation Credits in the Net-Metering Customer's account at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least $100

   b. An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation Credits remaining in a Net-Metering Customer's account when the Net-Metering Customer:

      i. ceases to be a customer of the Electric Utility;

      ii. ceases to operate the Net-Metering Facility; or

      iii. transfers the Net-Metering Facility to another person.

4. ~~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.~~ When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on ~~is~~ its annual average avoided energy costs in the applicable Regional Transmission Organization for the current **calendar** year.

~~4.~~5.~~If, after a 12-month Billing Cycle, it is found that a Net-Metering Customer generates Net Excess Generation Credits in each month of the 12-month Billing Cycle, the Electric Utility shall notify the Net-Metering Customer, in writing, that the Net Metering Facility is being operated in violation of state law and the Commission's Net Metering Rules. The Net-Metering Customer shall be given six monthly Billing Cycles to correct the violation. If, at the end of the six monthly Billing Cycles it is found that the Net-Metering Customer has generated Net Excess Generation Credits in each month of the six monthly Billing Cycles, the Electric Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.~~

D. Upon request from a ~~n~~Net-~~m~~Metering ~~c~~Customer an ~~e~~Electric ~~u~~Utility must apply ~~n~~Net ~~e~~Excess ~~g~~Generation ~~credits~~ to the ~~n~~Net-~~m~~Metering ~~c~~Customer's ~~a~~Additional ~~m~~Meters provided that:

1. The ~~n~~Net-~~m~~Metering ~~c~~Customer must give at least 30 days' notice to the Electric ~~u~~Utility of its request to apply Net Excess Generation to the Additional Meter(s).

2. The ~~a~~Additional ~~m~~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 ~~n~~Net-~~m~~Metering ~~c~~Customer's Additional ~~m~~Meters is identified, the ~~n~~Net-~~m~~Metering ~~c~~Customer must designate the rank order for the ~~a~~Additional ~~m~~Meters to which Net ~~e~~Excess Generation ~~kWhs are~~ is to be applied. The ~~n~~Net-~~m~~Metering ~~c~~Customer cannot designate the rank order more than once during the ~~a~~Annual ~~b~~Billing ~~c~~Cycle.

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

E. Any ~~r~~Renewable ~~e~~Energy ~~c~~Credit created as a result of electricity supplied by a ~~n~~Net-~~m~~Metering ~~c~~Customer is the property of the ~~n~~Net-~~m~~Metering ~~c~~Customer that generated the ~~r~~Renewable Energy ~~c~~Credit.

Rule ~~2.06~~ 2.05 ~~–~~ Application to Exceed Generating Capacity Limit

A. A ~~non-residential~~ Net-Metering Customer shall file an application with the Commission ~~for~~seeking approval to install a Net-Metering Facility with a generating capacity of more than 300 kW for non-residential use under Ark. Code Ann. §§ 23-18-604(b) (5) **or~~and~~** (7) **as appropriate**.

B. The application shall be filed in conformance with Section 3 of the Commission's Rules of Practice and Procedure and shall, at a minimum, include ~~– **supporting testimony, exhibits, or other documentation including**~~:

1. Evidence ~~supporting and substantiating how~~that the Net-Metering Facility in excess of 300 kW satisfies the requirements of Ark. Code Ann. §§ 23-18-604(b)(5) **or~~and~~** (7)~~.~~:

2. A description of the proposed Net-Metering Facility including:

a. Project proposal;

b. Project location (street address, town, utility service area);

c. Generator type (wind, solar, hydro, etc.);

d. Generator rating in kW (DC or AC);

e. Capacity factor;

f. Point of interconnection with the Electric Utility;

g. Single Phase or Three Phase interconnection;

h. Planned method of interconnection consistent with Rule 3.01.B.;

i. Expected ~~system~~facility ~~output and~~ performance ~~of the facility~~ calculated using an industry recognized simulation model (PVWatts, etc.);

3. Evidence that the electrical energy produced by the Net-Metering Facility **is not** ~~**intended to will not**~~ exceed the amount necessary to offset part or all of the Net-Metering Customer requirements for electricity in the form of:

a. The monthly electric bills for the 12 months prior to the application for the ~~Designated~~Generation Meter and Additional Meter(s), if any, to be credited with Net Excess Generation ~~to substantiate that the electrical energy produced by the Net-Metering Facility will not exceed the amount necessary to offset part or all of the Net-Metering Customer requirements for electricity.~~ ‘ or

b. In the absence of historical data reasonable estimates for the class and character of service may be made; and

4. **A** copy of the Preliminary Interconnection Review Request submitted to the Electric Utility and the results of the utility’s interconnection site review conducted pursuant to Rule 3.03.

SECTION 3. INTERCONNECTION OF NET- METERING FACILITIES TO EXISTING ELECTRIC POWER SYSTEMS

Rule 3.01 Requirements for Initial Interconnection of a Net-M-Metering Facility

A. A ~~n~~Net-~~ m~~Metering customer shall execute a Standard Interconnection Agreement for Net-~~–~~Metering Facilities (Appendix A) prior to interconnection with the utility's facilities.

B. A ~~n~~Net-~~ m~~Metering ~~f~~Facility shall be capable of operating in parallel and safely commencing the delivery of power into the utility system at a single point of interconnection. To prevent a ~~n~~Net-~~ m~~Metering ~~c~~Customer from back-feeding a de-energized line, a ~~n~~Net-~~ m~~Metering ~~f~~Facility shall have a visibly open, lockable, manual disconnect switch which is accessible by the ~~e~~Electric ~~u~~Utility and clearly labeled. This requirement for a manual disconnect switch shall be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

C. The customer shall submit a Standard Interconnection Agreement to the ~~e~~Electric ~~u~~Utility at least thirty (30) days prior to the date the customer intends to interconnect the ~~n~~Net-~~ m~~Metering ~~f~~Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed for the notification to be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The ~~e~~Electric ~~u~~Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

D. Following notification by the customer as specified in Rule 3.01.C, the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent ~~p~~Parallel ~~o~~Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

E. The ~~n~~Net-~~ m~~Metering ~~f~~Facility, at the ~~n~~Net-~~ m~~Metering ~~c~~Customer's expense, shall meet safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and

Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and Underwriters Laboratories (UL).

F. The ~~n~~Net~~- m~~Metering ~~f~~Facility, at the ~~n~~Net~~- m~~Metering ~~c~~Customer's expense, shall meet all safety and performance standards adopted by the Electric ~~u~~Utility and filed with and approved by the Commission pursuant to these Rules that are necessary to assure safe and reliable operation of the ~~n~~Net~~- m~~Metering ~~f~~Facility to the Electric ~~u~~Utility's system.

G. If the Electric ~~u~~Utility's existing facilities are not adequate to interconnect with the ~~n~~Net~~- m~~Metering ~~f~~Facility, the Net-Metering Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities. ~~any changes will be performed in accordance with the Utility's Extension of Facilities Tariff.~~

Rule 3.02 Requirements for Modifications or Changes to a Net-Metering Facility

A. Prior to being made, the Net-Metering Customer shall notify the Electric Utility of, and the Electric Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part I, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. ~~Modifications or changes made to a net metering facility shall be evaluated by the electric utility prior to being made.~~ The notice provided by the ~~n~~Net~~- m~~Metering ~~c~~Customer shall provide detailed information describing the modifications or changes to the ~~e~~Electric ~~u~~Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made. ~~prior to making the modifications to the net metering facility.~~ The utility shall review the proposed changes to the facility and provide the results of its evaluation to the customer, in writing, within thirty (30) days of receipt of the customer's proposal. Any items that would prevent ~~p~~Parallel ~~o~~Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

~~A.~~B. If the Net-Metering Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend **Net-Metering** service pursuant to **the procedures in** Section 6 of the Commission's General Service Rules.

~~B.~~C. A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset ~~part or~~ all of the Net-Metering Customer requirements for electricity.

Rule 3.03 Requirements for Preliminary Interconnection Site Review Request

A. For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to Rule **2.05.B.4**~~2.06.B.4~~, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information, Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

B. Following notification by the customer as specified in Rule 3.03.A, the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

C. The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs of conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

D. The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility.

SECTION 4. STANDARD INTERCONNECTION AGREEMENT, PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST, AND STANDARD NET--METERING TARIFF FOR NET--METERING FACILITIES

Rule 4.01 Standard Interconnection Agreement, Preliminary Interconnection Site Review Request, and Standard Net--Metering Tariff

Each ~~e~~Electric ~~u~~Utility shall file, for approval by the Commission, a Standard Interconnection Agreement for Net--Metering Facilities (Appendix A), Preliminary Interconnection Site Review Request (Appendix A-1) and a Net--Metering Tariff in standard tariff format (Appendix B).

Rule 4.02 Filing and Reporting Requirements

Each ~~e~~Electric ~~u~~Utility shall file in Docket No. 06-105-U by March 15 of each year, a report individually listing each ~~all existing n~~Net~~- m~~Metering ~~f~~Facility~~ies~~, the type of resource~~facility~~ (Solar, Wind, etc.), its use (Residential or Other), ~~and the~~ generator capacity rating, ~~and, where applicable, the~~ inverter ~~power~~ capacity rating, and if the Net-Metering Facility~~facility~~ is associated with Additional Meters (Yes or No), as of the end of the previous calendar year. The annual report shall be provided in spreadsheet format. ~~of each nNet- mMetering fFacility as of the end of the previous calendar year.~~

APPENDIX A

STANDARD INTERCONNECTION AGREEMENT FOR NET--METERING FACILITIES

I. STANDARD INFORMATION

Section 1. Customer Information

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Facility Location (if different from above): _____

Daytime Phone: _____ Evening Phone: _____

Utility Customer Account Number (from electric bill) to which the Net-Metering Facility is physically attached: _____

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro turbine (circle one)

Generator Rating (kW): _____ AC or DC (circle one)

Describe Location of Accessible and Lockable Disconnect (If required): _____

_____

Inverter Manufacturer: _____ Inverter Model: _____

Inverter Location: _____ Inverter Power Rating: _____

Expected Capacity Factor: _____

Expected annual production of electrical energy (kWh) calculated using industry recognized simulation model (PVWatts, etc.): _____

Section 3. Installation Information

Attach a detailed electrical diagram of the ~~n~~Net-~~m~~Metering ~~f~~Facility.

Installed by: _____ Qualifications/Credentials: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Daytime Phone: _____ Installation Date: _____

Section 4. Certification

~~1.~~ The system has been installed in compliance with the local Building/Electrical Code of _____ (City/County)

Signed (Inspector): _____ Date: _____

(In lieu of signature of inspector, a copy of the final inspection certificate may be attached.)

~~2.~~ The system has been installed to my satisfaction and I have been given system warranty information and an operation manual, and have been instructed in the operation of the system.

Signed (Owner): _____ Date: _____

Section 5. E-mail Addresses for parties

~~1.~~ Customer's e-mail address:

_____

~~2.~~ Utility's e-mail address: _____ (To be provided by utility.)

Section 6. Utility Verification and Approval

~~1.~~ Facility Interconnection Approved: _____ Date: _____

_____

Metering Facility Verification by: _____ Verification Date: _____

II. INTERCONNECTION AGREEMENT TERMS AND CONDITIONS

This Interconnection Agreement for Net-~~-~~Metering Facilities ("Agreement") is made and entered into this _____day of _____, 20_____, by _____("Electric Utility") and _____ ("Customer"), a_____(specify whether corporation or other), each hereinafter sometimes referred to individually as "Party" or collectively as the "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Section 1. The Net-~~-~~Metering Facility

The Net-~~-~~Metering Facility meets the requirements of Ark. Code Ann. § 23-18-603(6) and the Arkansas Public Service Commission's *Net-~~-~~Metering Rules*.

Section 2. Governing Provisions

The ~~p~~Parties shall be subject to the provisions of Ark. Code Ann. § 23-18-604 and the terms and conditions set forth in this Agreement, the Commission's *Net-~~-~~Metering Rules*, the Commission's *General Service Rules,* and the Electric Utility's applicable tariffs.

Section 3. Interruption or Reduction of Deliveries

The Electric Utility shall not be obligated to accept and may require Customer to interrupt or reduce deliveries when necessary in order to construct, install, repair, replace, remove, investigate, or inspect any of its equipment or part of its system; or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices. Whenever possible, the Utility shall give the Customer reasonable notice of the possibility that interruption or reduction of deliveries may be required. Notwithstanding any other provision of this Agreement, if at any time the Utility reasonably determines that either the facility may endanger the Electric Utility's personnel or other persons or property, or the continued operation of the Customer's facility may endanger the integrity or safety of the Electric Utility's electric system, the Utility shall have the right to disconnect and lock out the Customer's facility from the Electric Utility's electric system. The Customer's facility shall remain disconnected until such time as the Electric Utility is reasonably satisfied that the conditions referenced in this Section have been corrected.

Section 4. Interconnection

Customer shall deliver the as-available energy to the Electric Utility at the Electric Utility's meter.

Electric Utility shall furnish and install a standard kilowatt hour meter. Customer shall provide

and install a meter socket for the Electric Utility's meter and any related interconnection equipment per the Electric Utility's technical requirements, including safety and performance standards.

The customer shall submit a Standard Interconnection Agreement to the ~~e~~Electric ~~u~~Utility at least thirty (30) days prior to the date the customer intends to interconnect the ~~n~~Net~~ m~~Metering ~~f~~Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The ~~e~~Electric ~~u~~Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

Following submission of the Standard Interconnection Agreement~~notification~~ by the customer~~ as specified in Rule 3.01.C~~, the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent ~~p~~Parallel ~~o~~Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Electric Utility's existing facilities are not adequate to interconnect with the Net-Metering Facility, the Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities.

To prevent a ~~n~~Net~~ m~~Metering ~~e~~Customer from back-feeding a de-energized line, the customer shall install a manual disconnect switch with lockout capability that is accessible to utility personnel at all hours. This requirement for a manual disconnect switch will be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

Customer, at his own expense, shall meet all safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and Underwriters Laboratories (UL).

Customer, at his own expense, shall meet all safety and performance standards adopted by the utility and filed with and approved by the Commission ~~pursuant to Rule 3.01.F~~ that are necessary to assure safe and reliable operation of the ~~n~~Net ~~m~~Metering ~~f~~Facility to the utility's system.

Customer shall not commence ~~p~~Parallel ~~o~~Operation of the ~~n~~Net~~ m~~Metering ~~f~~Facility until the ~~n~~Net ~~m~~Metering ~~f~~Facility has been inspected and approved by the Electric Utility. Such approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Electric Utility's approval to operate the Customer's ~~n~~Net~~ m~~Metering ~~f~~Facility in parallel with

the Utility's electrical system should not be construed as an endorsement, confirmation, warranty, guarantee, or representation concerning the safety, operating characteristics, durability, or reliability of the Customer's ~~n~~Net~~- m~~Metering ~~f~~Facility.

Section 5. Modifications or Changes to the Net-Metering Facility Described in Part 1, Section 2

Prior to being made, the Customer shall notify the Electric Utility of, and the Electric Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part 1, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. ~~Modifications or changes made to a net metering facility shall be evaluated by the Utility prior to being made.~~ The notice provided by the Customer shall provide detailed information describing the modifications or changes to the Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made. ~~prior to making the modifications to the net metering facility.~~ The Electric Utility shall review the proposed changes to the facility and provide the results of its evaluation to the Customer, in writing, within thirty (30) calendar days of receipt of the Customer's proposal. Any items that would prevent ~~p~~Parallel ~~o~~Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend **Net-Metering** service pursuant to **the procedures in** Section 6 of the Commission's General Service Rules.

A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset ~~part or~~ all of the Net-Metering Customer requirements for electricity.

Section ~~5~~6. Maintenance and Permits

The customer shall obtain any governmental authorizations and permits required for the construction and operation of the ~~n~~Net~~- m~~Metering ~~f~~Facility and interconnection facilities. The Customer shall maintain the ~~n~~Net~~- m~~Metering ~~f~~Facility and interconnection facilities in a safe and reliable manner and in conformance with all applicable laws and regulations.

Section ~~6~~7. Access to Premises

The Electric Utility may enter the Customer's premises to inspect the Customer's protective devices and read or test the meter. The Electric Utility may disconnect the interconnection facilities without notice if the Electric Utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or the Electric Utility's facilities, or property of others from damage or interference caused by the Customer's facilities, or lack of properly operating protective devices.

Section ~~7~~8. Indemnity and Liability

The following is Applicable to Agreements between the Electric Utility and to all Customers except the State of Arkansas and any entities thereof, local governments and federal agencies:

Each ~~p~~Party shall indemnify the other ~~p~~Party, its directors, officers, agents, and employees against all loss, damages, expense and liability to third persons for injury to or death of persons or injury to property caused by the indemnifying party's engineering, design, construction, ownership, maintenance or operations of, or the making of replacements, additions or betterment to, or by failure of, any of such ~~p~~Party's works or facilities used in connection with this Agreement by reason of omission or negligence, whether active or passive. The indemnifying ~~p~~Party shall, on the other ~~p~~Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying P~~p~~arty shall pay all costs that may be incurred by the other ~~p~~Party in enforcing this indemnity. It is the intent of the ~~p~~Parties hereto that, where negligence is determined to be contributory, principles of comparative negligence will be followed and each ~~p~~Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that ~~p~~Party's negligence. Nothing in this paragraph shall be applicable to the ~~p~~Parties in any agreement entered into with the State of Arkansas or any entities thereof, or with local governmental entities or federal agencies. Furthermore, nothing in this Agreement shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof. The Arkansas State Claims Commission has exclusive jurisdiction over claims against the state.

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to or any liability to any person not a ~~p~~Party to this Agreement. Neither the Electric Utility, its officers, agents or employees shall be liable for any claims, demands, costs, losses, causes of action, or any other liability of any nature or kind, arising out of the engineering, design, construction, ownership, maintenance or operation of, or the making of replacements, additions or betterment to, or by failure of, the Customer's facilities by the Customer or any other person or entity.

Section ~~8~~9. Notices

The Net-Metering Customer shall notify the Electric Utility of any changes in the information provided herein.

All written notices shall be directed as follows:

Attention:
[Electric Utility Agent or Representative]
[Electric Utility Name and Address]

Attention:
[Customer]
Name: _____
Address: _____
City:_____
Customer notices to Electric Utility shall refer to the Customer's electric service account number set forth in Section 1 of this Agreement.

Section 10. Term of Agreement

The term of this Agreement shall be the same as the term of the otherwise applicable standard rate schedule. This Agreement shall remain in effect until modified or terminated in accordance with its terms or applicable regulations or laws.

Section 11. Assignment

This Agreement and all provisions hereof shall inure to and be binding upon the respective ~~p~~Parties hereto, their personal representatives, heirs, successors, and assigns. The Customer shall not assign this Agreement or any part hereof without the prior written consent of the Electric Utility, and such unauthorized assignment may result in termination of this Agreement.

Section 12. Net-Metering Customer Certification

I hereby certify that all of the information provided in this Agreement is true and correct, to the best of my knowledge, and that I have read and understand the Terms and Conditions of this Agreement.

Signature: _____ Date: _____

IN WITNESS WHEREOF, the ~~p~~Parties have caused this Agreement to be executed by their duly authorized representatives.

Dated this _____ day of _____, 20__.

Customer:	Electric Utility:
_____	_____
By: _____	By: _____
Title: _____	Title: _____
Mailing Address:	Mailing Address:
_____	_____
_____	_____
E-mail Address:	E-mail Address:
_____	_____

STANDARD INTERCONNECTION AGREEMENT FOR NET-METERING FACILITIES

Disclaimer

POSSIBLE FUTURE RULES OR RATE CHANGES, OR BOTH

AFFECTING YOUR NET-METERING FACILITY

The following is a supplement to the Interconnection Agreement you signed with [Electric Utility].

1. Electricity rates, basic charges, and service fees, set by [Electric Utility] and approved by the Arkansas Public Service Commission **(Commission)**, are subject to change.

2. I understand that I will be responsible for paying any future increases to my electricity rates, basic charges, or service fees from [Electric Utility].

3. My Net-Metering System is subject to the current rates of [Electric Utility], and the rules and regulations of the ~~**Arkansas Public Service**~~ Commission ~~**(Commission)**~~. The [Electric Utility] may change its rates in the future with approval of the Commission or the Commission may alter its rules and regulations, or both may happen. If either or both occurs, my system will be subject to those changes.

By signing below, you acknowledge that you have read and understand the above disclaimer.

_____
Name (printed)

_____
Signature

_____
Date

APPENDIX A-1

PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST

I. STANDARD INFORMATION

Section 1. Customer Information

Name: _____
Contact Person: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Facility Location (if different from above): _____
Daytime Phone: _____ Evening Phone: _____
E-Mail Address: _____ Fax: _____
If the requested point of interconnection is the same as an existing electric service, provide the electric service account number: _____
Additional Customer Accounts (from electric bill) to be credited with Net Excess Generation ~~(in rank order)~~: _____
Annual Energy Requirements (kWh) in the previous twelve (12) months for the account physically attached to the Net-Metering Facility and for any additional accounts listed (in the absence of historical data reasonable estimates for the class and character of service may be made): _____

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro Turbine (circle one)
Generator Rating (kW): _____ AC or DC (circle one)
Expected Capacity Factor: _____
Expected annual production of electrical energy (kWh) of the facility calculated using industry recognized simulation model (PVWatts, etc): _____

Section 3. Interconnection Information

Attach a detailed electrical diagram showing the configuration of all generating facility equipment, including protection and control schemes.
Requested Point of Interconnection: _____
Customer-Site Load (kW) at Net-Metering Facility location (if none, so state): _____
Interconnection Request: Single Phase: _____ Three Phase: _____
~~Planned method of interconnection consistent with Rule 3.01.B.~~ _____

Section 4. Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Preliminary Interconnection Site Review is true and correct.
Signature: _____ Date: _____

II. TERMS AND CONDITIONS

Section 1. Requirements for Request

For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to the requirement of Rule 2.06.B.4, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information, Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

Section 2. Utility Review

Following submission of the Preliminary Interconnection Site Review Request by the customer the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The Electric ~~u~~Utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs for conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

Section 3. Application to Exceed 300 kW Net-Metering Facility Size Limit

This Preliminary Interconnection Site Review Request and the results of the Electric Utility's review of the facility interconnection shall be filed with the Commission with the customer's application to exceed the 300 kW facility size limit pursuant to Net Metering Rule 2.05.B.4.~~2.06.B.4.~~

Section 4. Standard Interconnection Agreement

The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility.

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
Replacing:	Sheet No.	
Name of Company		
Kind of Service: Electric	Class of Service: All	
Part III. Rate Schedule No. X		
Title: NET--METERING		PSC File Mark Only

X. NET--METERING

X.1. AVAILABILITY

X.1.1. To any residential or any other customer who takes service under standard rate schedule(s) _____ (list schedules) who has installed ownsis an owner of a nNet- mMetering fFacility and has obtained a signed a Standard Interconnection Agreement for Net--Metering Facilities with the an Electric Utility. The generating capacity of Net-Metering Facilities may not exceed the greater of: 1) twenty-five kilowatts (25 kW) or 2) one hundred percent (100%) of the Net-Metering Customer's highest monthly usage in the previous twelve (12) months for Residential Use. The generating capacity of Net-Metering Facilities may not exceed three hundred kilowatts (300 kW) for non-residential use unless otherwise allowed by the Commission. Such facilities must be located on the customer's premise andNet-Metering is intended primarily to offset partsome or all of the customer's energy use.

The provisions of the customer's standard rate schedule are modified as specified herein.

X.1.2. Net-mMetering cCustomers taking service under the provisions of this tariff may not simultaneously take service under the provisions of any other alternative source generation or co-generation tariff except as provided in the Net--Metering Rules.

X.2. MONTHLY BILLING

X.2.1. The Electric Utility shall separately meter, bill, and credit each Net-Metering Facility even if one (1) or more Net-Metering Facilities are under common ownership.

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
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Kind of Service: Electric	Class of Service: All	
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X.2.~~1~~2. On a monthly basis, the ~~n~~Net-~~m~~Metering ~~c~~Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider schedules. Under ~~n~~Net-~~m~~Metering, only the kilowatt hour (kWh) units of a Net-Metering ~~c~~Customer's bill are ~~affected~~ netted.

X.2.~~2~~3. If the kWhs supplied by the ~~e~~Electric ~~u~~Utility exceeds the kWhs generated by the ~~n~~Net-~~m~~Metering ~~f~~Facility and fed back to the ~~e~~Electric ~~u~~Utility during the ~~b~~Billing ~~p~~Period, the ~~n~~Net-~~m~~Metering ~~c~~Customer shall be billed for the net billable kWhs supplied by the ~~e~~Electric ~~u~~Utility in accordance with the rates and charges under the Net–Metering ~~c~~Customer's standard rate schedule.

X.2.~~3~~4. If the kWhs generated by the ~~n~~Net-~~m~~Metering ~~f~~Facility and fed back to the ~~e~~Electric ~~u~~Utility during the ~~b~~Billing ~~p~~Period exceed the kWhs supplied by the ~~e~~Electric ~~u~~Utility to the ~~n~~Net-~~m~~Metering ~~c~~Customer during the applicable ~~b~~Billing ~~p~~Period, the Electric ~~u~~Utility shall credit the ~~n~~Net-~~m~~Metering ~~c~~Customer with any accumulated ~~n~~Net ~~e~~Excess ~~g~~Generation in the next applicable ~~b~~Billing ~~p~~Period.

X.2.~~4~~5. Net ~~e~~Excess ~~g~~Generation shall first be credited to the ~~n~~Net-~~m~~Metering ~~c~~Customer's meter to which the ~~n~~Net-~~m~~Metering ~~f~~Facility is physically attached (~~d~~DesignatedGeneration ~~m~~Meter).

X.2.~~5~~6. After application of X.2.~~4~~5 and upon request of the ~~n~~Net-~~m~~Metering ~~c~~Customer pursuant to X.2.~~9~~8, any remaining ~~n~~Net ~~e~~Excess ~~g~~Generation shall be credited to one or more of the ~~n~~Net-~~m~~Metering ~~c~~Customer's meters (~~a~~Additional ~~m~~Meters) in the rank order provided by the Net-Metering ~~c~~Customer.

X.2.~~6~~7. Net ~~e~~Excess ~~g~~Generation shall be credited as described in X.2.~~4~~5 and X.2.~~5~~6 during subsequent ~~b~~Billing ~~p~~Periods; the ~~n~~Net ~~e~~Excess ~~g~~Generation Credits remaining in a ~~n~~Net-~~m~~Metering ~~c~~Customer's account at the close of a~~n annual~~ billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely. For Net Excess Generation Credits older than twenty-four (24) months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation Credits in the Net-Metering Customer's account at the Electric Utility's estimated annual average cost

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
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rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least one hundred dollars ($100). An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation Credits remaining in a Net-Metering Customer's account when the Net-Metering Customer: 1) ceases to be a customer of the Electric Utility; 2) ceases to operate the Net-Metering Facility; or transfers the Net-Metering Facility to another person. ~~, 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.~~

When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on its annual average avoided energy costs in the applicable Regional Transmission Organization for the current year.

~~**If, after a 12-month Billing Cycle, it is found that a Net-Metering Customer generates Net Excess Generation Credits in each month of the 12-month Billing Cycle, the Electric Utility shall notify the Net-Metering Customer, in writing, that the Net Metering Facility is being operated in violation of state law and the Commission's Net Metering Rules. The Net-Metering Customer shall be given six monthly Billing Cycles to correct the violation. If, at the end of the six monthly Billing Cycles it is found that the Net-Metering Customer has generated Net Excess Generation Credits in each month of the six monthly Billing Cycles, the Electric Utility shall have the right to suspend service pursuant to Section 6 of the Commission's General Service Rules.**~~

~~X.2.7. Except as provided in X.2.6, any net excess generation credit remaining in a net-metering customer's account at the close of an annual billing cycle shall expire.~~

X.2.8. Upon request from a ~~n~~Net-~~m~~Metering ~~c~~Customer an ~~e~~Electric ~~u~~Utility ~~mayust~~must apply ~~n~~Net ~~e~~Excess ~~g~~Generation to the ~~n~~Net-~~m~~Metering ~~c~~Customer's ~~a~~Additional ~~m~~Meters provided that:

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

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(a) The nNet-mMetering cCustomer must give at least 30 days' notice to the Electric uUtility.

(b) The aAdditional mMeter(s) must be identified at the time of the request. Additional Meter(s) and must shall be under common ownershipin the net-metering customer's name, within the same utility service territorya single Electric Utility's service area;, and shall be used to measure only electricity used for the nNet-mMetering cCustomer's requirements for electricity; may be in a different class of service than the DesignatedGeneration Meter; shall be assigned to one, and only one, DesignatedGeneration Meter; shall not be a DesignatedGeneration Meter; and shall not be associated with unmetered service.

(c) In the event that more than one of the nNet-mMetering cCustomer's meters is identified, the nNet-mMetering cCustomer must designate the rank order for the aAdditional mMeters to which excess kWhs are to be applied. The nNet-mMetering cCustomer cannot designate the rank order more than once during the Aannual bBilling cCycle.

(d) The nNet-mMetering cCustomer's identified aAdditional mMeters do not have to be used for the same class of service.

X.2.9. Any rRenewable eEnergy cCredit created as the result of electricity supplied by a nNet-mMetering cCustomer is the property of the nNet-mMetering cCustomer that generated the rRenewable Energy cCredit.

ARKANSAS
PUBLIC SERVICE COMMISSION

NET-METERING RULES

Last Revised: March xx, 2017
Order No. xx
Docket No. 16-027-R
Effective : xx-xx-2017

NET-METERING RULES

ADMINISTRATIVE HISTORY

Docket	Date	Order No.	Subject Matter of Docket/ Order
02-046-R	07/26/02	4	Adopted rules relating to the terms and conditions of – Net-Metering.
06-105-U	11/27/07	8	Amended definitions; Rules 1.02, 2.01, and 2.04; Section 1 of the Standard Interconnection Agreement, Appendix A; and X.1.1, X.2.3, and X.2.4 of the Net-Metering Tariff, Appendix B.
	11/29/07	10	Amended Rule 4.02 to delete reference to Docket No. 86-033-A.
	11/30/07	11	Amended the Standard Interconnection Agreement, Appendix A to add e-mail address lines to the signature block.
	12/19/07	12	Errata order correcting clerical errors in the amendments adopted in Order No. 8.
12-001-R	06/15/12	6	Amended Section 7 of the Standard Interconnection Agreement, Appendix A to exempt state governmental agencies and entities, local governmental entities, and federal entities from the indemnity requirement.
12-060-R	09/03/13	7	Amended Rule 2.04 to provide for meter aggregation, incorporated the provisions of Act 1221 of 2013 concerning the carryover of net-metering credits, and added a definition of Net-Metering Customer to track the definition in Ark. Code Ann. § 23-18-603.
	10/11/13	10	Updated the Net-Metering Tariff to reflect the amendments adopted in Order No. 7.
16-027-R	xx/xx/17	XX	Revised Rules to comply with Act 827 of 2015.

NET-METERING RULES

TABLE OF CONTENTS

SECTION 1. GENERAL PROVISIONS

Rule 1.01 Definitions

The following definitions shall apply throughout the Net-Metering Rules (NMRs) except as otherwise required by the context, and any references to the NMRs shall include these definitions:

(a) Additional Meter

A meter associated with the Net-Metering Customer's account that the Net-Metering Customer may credit with Net Excess Generation from the Generation Meter. Additional Meter(s): 1) shall be under common ownership within a single Electric Utility's service area; 2) shall be used to measure the Net-Metering Customer's requirements for electricity; 3) may be in a different class of service than the Generation Meter; 4) shall be assigned to one, and only one, Generation Meter; 5) shall not be a Generation Meter; and 6) shall not be associated with unmetered service.

(b) Annual Billing Cycle

The normal annual fiscal accounting period used by the utility.

(c) Avoided Costs

As defined in Ark. Code Ann. § 23-18-604(c).

(d) Billing Period

The billing period for net-metering will be the same as the billing period under the customer's applicable standard rate schedule.

(e) Biomass Resource

A resource that may use one or more organic fuel sources that can either be processed into synthetic fuels or burned directly to produce steam or electricity, provided that the resources are renewable, environmentally sustainable in their production and use, and the process of conversion to electricity results in a net environmental benefit. This includes, but is not limited to, dedicated energy crops and trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic plants, animal wastes, and other accepted organic, renewable waste materials.

(f) Commission

The Arkansas Public Service Commission.

(g) Electric Utility

A public or investor-owned utility, an electric cooperative, municipal utility, or any private power supplier or marketer that is engaged in the business of supplying electric energy to the ultimate customer or any customer class within the state.

(h) Fuel Cell Resource

A resource that converts the chemical energy of a fuel directly to direct current electricity without intermediate combustion or thermal cycles.

(i) Generation Meter

The meter associated with the Net-Metering Customer's account to which the Net-Metering Facility is physically attached.

(j) Geothermal Resource

A resource in which the prime mover is a steam turbine. The steam is generated in the earth by heat from the earth's magma.

(k) Hydroelectric Resource

A resource in which the prime mover is a water wheel. The water wheel is driven by falling water.

(l) Micro Turbine Resource

A resource that uses a small combustion turbine to produce electricity.

(m) Net Excess Generation

As defined in Ark. Code Ann. § 23-18-603(3).

(n) Net Excess Generation Credits

Uncredited customer generated kilowatt hours remaining in a Net-Metering Customer's account at the close of a Billing Period to be credited, or, pursuant to Rule 2.05, purchased by the utility in a future billing period.

(o) Net-Metering

As defined in Ark. Code Ann. § 23-18-603(4).

(p) Net-Metering Customer

As defined in Ark. Code Ann. § 23-18-603(5).

(q) Net-Metering Facility

As defined in Ark. Code Ann. § 23-18-603(6).

(r) Parallel Operation

The operation of on-site generation by a customer while the customer is connected to the Electric Utility's distribution system.

(s) Qualifying Facility

As defined in Ark. Code Ann. § 23-3-702(4).

(t) Renewable Energy Credit

As defined in Ark. Code Ann. § 23-18-603(7).

(u) Residential Use

Service provided under an Electric Utility's standard rate schedules applicable to residential service.

(v) Solar Resource

A resource in which electricity is generated through the collection, transfer and/or storage of the sun's heat or light.

(w) Wind Resource

A resource in which an electric generator is powered by a wind-driven turbine.

Rule 1.02 Purpose

The purpose of these Net-Metering Rules is to establish rules for net energy metering and interconnection.

Rule 1.03 Statutory Provisions

A. These Rules are developed pursuant to the Arkansas Renewable Energy Development Act of 2001 (Ark. Code Ann. § 23-18-***601 et seq.*** as amended.)

B. These Rules are promulgated pursuant to the Commission's authority under Ark. Code Ann. §§ 23-2-301, 23-2-304(a)(3), and 23-2-305.

C. Nothing in these Rules shall govern, limit, or restrict the Commission's authority under Ark. Code Ann. § 23-18-604.

Rule 1.04 Other Provisions

A. These Rules apply to all Electric Utilities, as defined in these Rules, that are jurisdictional to the Commission.

B. The Net-Metering Rules are not intended to, and do not affect or replace any Commission approved general service regulation, policy, procedure, rule, or

service application of any utility which addresses items other than those covered in these Rules.

C. Net-Metering Customers taking service under the provisions of the Net-Metering Tariff may not simultaneously take service under the provisions of any other alternative source generation or cogeneration tariffs except as provided herein.

SECTION 2. NET-METERING REQUIREMENTS

Rule 2.01 Electric Utility Requirements

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.

Rule 2.02 Metering Requirements

A. Metering equipment shall be installed to both accurately measure the electricity supplied by the Electric Utility to each Net-Metering Customer and also to accurately measure the electricity generated by each Net-Metering Customer that is fed back to the Electric Utility over the applicable Billing Period. If nonstandard metering equipment is required, the customer is responsible for the cost differential between the required metering equipment and the utility's standard metering equipment for the customer's current rate schedule.

B. Accuracy requirements for a meter operating in both forward and reverse registration modes shall be as defined in the Commission's Special Rules - Electric. A test to determine compliance with this accuracy requirement shall be made by the Electric Utility either before or at the time the Net-Metering Facility is placed in operation in accordance with these Rules.

Rule 2.03 New or Additional Charges

Any new or additional charge which would increase a Net-Metering Customer's costs beyond those of other customers in the rate class shall be filed by the Electric Utility with the Commission for approval. The filing shall be supported by the cost/benefit analysis described in Ark. Code Ann. § 23-18-604(b)(2).

Rule 2.04 Billing for Net-Metering

A. On a monthly basis, the Net-Metering Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider schedules. Under Net-Metering, only the kilowatt hour (kWh) units of a customer's bill are netted.

B. If the kWhs supplied by the Electric Utility exceeds the kWhs generated by the Net- Metering Facility and fed back to the Electric Utility during the Billing Period, the Net-Metering Customer shall be billed for the net kWhs supplied by the Electric Utility in accordance with the rates and charges under the customer's standard rate schedule.

C. If the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility exceed 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.

1. Net Excess Generation shall first be credited to the Net-Metering Customer's Generation Meter.

2. After application of subdivision D.1. and upon request of the Net-Metering Customer pursuant to subsection E., any remaining Net Excess Generation shall be credited to one or more of the Net-Metering Customer's Additional Meters in the rank order provided by the customer.

3. Net Excess Generation shall be credited as described in subdivisions (D)(1) and (D)(2) during subsequent Billing Periods. Net Excess Generation Credits remaining in a Net-Metering Customer's account at the close of a Billing Period shall not expire and shall be carried forward to subsequent Billing Periods indefinitely.

   a. For Net Excess Generation Credits older than 24 months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation Credits in the Net-Metering Customer's account at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least $100

   b. An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation Credits remaining in a Net-Metering Customer's account when the Net-Metering Customer:

      i. ceases to be a customer of the Electric Utility;

      ii. ceases to operate the Net-Metering Facility; or

      iii. transfers the Net-Metering Facility to another person..

4. When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on its annual average avoided energy costs in the applicable Regional Transmission Organization for the current calendar year.

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 Electric Utility of its request to apply Net Excess Generation to the Additional Meter(s).

2. The Additional Meter(s) must be identified at the time of the request.

3. In the event that more than one of the Net-Metering Customer's Additional Meters is identified, the Net-Metering Customer must designate the rank order for the Additional Meters to which Net Excess Generation is to be applied. The Net-Metering Customer cannot designate the rank order more than once during the Annual Billing Cycle.

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 Energy Credit.

Rule 2.05 Application to Exceed Generating Capacity Limit

A. A Net-Metering Customer shall file an application with the Commission seeking approval to install a Net-Metering Facility with a generating capacity of more than 300 kW for non-residential use under Ark. Code Ann. §§ 23-18-604(b) (5) or (7) as appropriate.

B. The application shall be filed in conformance with Section 3 of the Commission's Rules of Practice and Procedure and shall, at a minimum, include:

1. Evidence that the Net-Metering Facility in excess of 300 kW satisfies the requirements of Ark. Code Ann. §§ 23-18-604(b)(5) or (7):

2. A description of the proposed Net-Metering Facility including:

   a. Project proposal;

   b. Project location (street address, town, utility service area);

   c. Generator type (wind, solar, hydro, etc.);

   d. Generator rating in kW (DC or AC);

   e. Capacity factor;

   f. Point of interconnection with the Electric Utility;

   g. Single Phase or Three Phase interconnection;

   h. Planned method of interconnection consistent with Rule 3.01.B.;

i. Expected facility performance calculated using an industry recognized simulation model (PVWatts, etc.);

3. Evidence that the electrical energy produced by the Net-Metering Facility is not intended to-exceed the amount necessary to offset part or all of the Net-Metering Customer requirements for electricity in the form of:

   a. The monthly electric bills for the 12 months prior to the application for the Generation Meter and Additional Meter(s), if any, to be credited with Net Excess Generation ‘ or
   b. In the absence of historical data reasonable estimates for the class and character of service may be made; and

4. A copy of the Preliminary Interconnection Review Request submitted to the Electric Utility and the results of the utility’s interconnection site review conducted pursuant to Rule 3.03.

SECTION 3. INTERCONNECTION OF NET- METERING FACILITIES TO EXISTING ELECTRIC POWER SYSTEMS

Rule 3.01 Requirements for Initial Interconnection of a Net-Metering Facility

A. A Net-Metering customer shall execute a Standard Interconnection Agreement for Net-Metering Facilities (Appendix A) prior to interconnection with the utility's facilities.

B. A Net-Metering Facility shall be capable of operating in parallel and safely commencing the delivery of power into the utility system at a single point of interconnection. To prevent a Net-Metering Customer from back-feeding a de-energized line, a Net-Metering Facility shall have a visibly open, lockable, manual disconnect switch which is accessible by the Electric Utility and clearly labeled. This requirement for a manual disconnect switch shall be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

C. The customer shall submit a Standard Interconnection Agreement to the Electric Utility at least thirty (30) days prior to the date the customer intends to interconnect the Net-Metering Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed for the notification to be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The Electric Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

D. Following notification by the customer as specified in Rule 3.01.C., the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

E. The Net-Metering Facility, at the Net-Metering Customer's expense, shall meet safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and Underwriters Laboratories (UL).

F. The Net-Metering Facility, at the Net-Metering Customer's expense, shall meet all safety and performance standards adopted by the Electric Utility and filed with and approved by the Commission pursuant to these Rules that are necessary to assure safe and reliable operation of the Net-Metering Facility to the Electric Utility's system.

G. If the Electric Utility's existing facilities are not adequate to interconnect with the Net-Metering Facility, the Net-Metering Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities.

Rule 3.02 Requirements for Modifications or Changes to a Net-Metering Facility

A. Prior to being made, the Net-Metering Customer shall notify the Electric Utility of, and the Electric Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part I, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. The notice provided by the Net-Metering Customer shall provide detailed information describing the modifications or changes to the Electric Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made. The utility shall review the proposed changes to the facility and provide the results of its evaluation to the customer, in writing, within thirty (30) days of receipt of the customer's proposal. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

B. If the Net-Metering Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend Net-Metering service pursuant to the procedures in Section 6 of the Commission's General Service Rules.

C. A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset all of the Net-Metering Customer requirements for electricity.

Rule 3.03 Requirements for Preliminary Interconnection Site Review Request

A. For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to Rule 2.05.B.4, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information, Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

B. Following notification by the customer as specified in Rule 3.03.A., the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

C. The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs of conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

D. The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility.

SECTION 4. STANDARD INTERCONNECTION AGREEMENT, PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST, AND STANDARD NET-METERING TARIFF FOR NET-METERING FACILITIES

Rule 4.01 Standard Interconnection Agreement, Preliminary Interconnection Site Review Request, and Standard Net-Metering Tariff

Each Electric Utility shall file, for approval by the Commission, a Standard Interconnection Agreement for Net-Metering Facilities (Appendix A), Preliminary Interconnection Site Review Request (Appendix A-1) and a Net-Metering Tariff in standard tariff format (Appendix B).

Rule 4.02 Filing and Reporting Requirements

Each Electric Utility shall file in Docket No. 06-105-U by March 15 of each year, a report individually listing each Net-Metering Facility, the type of resource (Solar, Wind, etc.), its use (Residential or Other), generator capacity rating, inverter capacity rating, and if the Net-Metering Facility is associated with Additional Meters (Yes or No), as of the end of the previous calendar year. The annual report shall be provided in spreadsheet format.

APPENDIX A

STANDARD INTERCONNECTION AGREEMENT FOR NET-METERING FACILITIES

I. STANDARD INFORMATION

Section 1. Customer Information

Name:_____
Mailing Address:_____
City:_____ State: _____ Zip Code: _____
Facility Location (if different from above):_____
Daytime Phone: _____ Evening Phone: _____
Utility Customer Account Number (from electric bill) to which the Net-Metering Facility is physically attached: _____

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro turbine (circle one)
Generator Rating (kW): _____ AC or DC (circle one)
Describe Location of Accessible and Lockable Disconnect (If required): _____
_____
Inverter Manufacturer: _____ Inverter Model: _____
Inverter Location:_____ Inverter Power Rating: _____
Expected Capacity Factor: _____
Expected annual production of electrical energy (kWh) calculated using industry recognized simulation model (PVWatts, etc.): _____

Section 3. Installation Information

Attach a detailed electrical diagram of the Net-Metering Facility.
Installed by: _____
Qualifications/Credentials: _____
Mailing Address:_____
City:_____State: _____ Zip Code:_____
Daytime Phone:_____ Installation Date:_____

Section 4. Certification

The system has been installed in compliance with the local Building/Electrical Code of _____(City/County)
Signed (Inspector):_____ Date:_____
(In lieu of signature of inspector, a copy of the final inspection certificate may be attached.)

The system has been installed to my satisfaction and I have been given system warranty information and an operation manual, and have been instructed in the operation of the

system.
Signed (Owner):_____ Date:_____

Section 5. E-mail Addresses for parties
Customer's e-mail address:
_____
Utility's e-mail address: _____ (To be provided by utility.)

Section 6. Utility Verification and Approval
Facility Interconnection Approved: _____ Date: _____
Metering Facility Verification by: _____ Verification Date: _____

II. INTERCONNECTION AGREEMENT TERMS AND CONDITIONS

This Interconnection Agreement for Net-Metering Facilities ("Agreement") is made and entered into this _____day of _____, 20_____, by _____ ("Electric Utility") and _____ ("Customer"), a_____(specify whether corporation or other), each hereinafter sometimes referred to individually as "Party" or collectively as the "Parties". In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Section 1. The Net-Metering Facility
The Net-Metering Facility meets the requirements of Ark. Code Ann. § 23-18-603(6) and the Arkansas Public Service Commission's *Net-Metering Rules*.

Section 2. Governing Provisions
The Parties shall be subject to the provisions of Ark. Code Ann. § 23-18-604 and the terms and conditions set forth in this Agreement, the Commission's *Net-Metering Rules*, the Commission's *General Service Rules*, and the Electric Utility's applicable tariffs.

Section 3. Interruption or Reduction of Deliveries
The Electric Utility shall not be obligated to accept and may require Customer to interrupt or reduce deliveries when necessary in order to construct, install, repair, replace, remove, investigate, or inspect any of its equipment or part of its system; or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices. Whenever possible, the Utility shall give the Customer reasonable notice of the possibility that interruption or reduction of deliveries may be required. Notwithstanding any other provision of this Agreement, if at any time the Utility reasonably determines that either the facility may endanger the Electric Utility's personnel or other persons or property, or the continued operation of the Customer's facility may endanger the integrity or safety of the Utility's electric system, the Electric Utility shall have the right to disconnect and lock out the Customer's facility from the Electric Utility's electric system. The Customer's facility shall remain disconnected until such time as the Electric Utility is reasonably satisfied that the conditions referenced in

this Section have been corrected.

Section 4. Interconnection

Customer shall deliver the as-available energy to the Electric Utility at the Electric Utility's meter.

Electric Utility shall furnish and install a standard kilowatt hour meter. Customer shall provide and install a meter socket for the Electric Utility's meter and any related interconnection equipment per the Electric Utility's technical requirements, including safety and performance standards.

The customer shall submit a Standard Interconnection Agreement to the Electric Utility at least thirty (30) days prior to the date the customer intends to interconnect the Net-Metering Facilities to the utility's facilities. Part I, Standard Information, Sections 1 through 4 of the Standard Interconnection Agreement must be completed be valid. The customer shall have all equipment necessary to complete the interconnection prior to such notification. If mailed, the date of notification shall be the third day following the mailing of the Standard Interconnection Agreement. The Electric Utility shall provide a copy of the Standard Interconnection Agreement to the customer upon request.

Following submission of the Standard Interconnection Agreement by the customer, the utility shall review the plans of the facility and provide the results of its review to the customer, in writing, within 30 calendar days. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Electric Utility's existing facilities are not adequate to interconnect with the Net-Metering Facility, the Customer shall pay the cost of additional or reconfigured facilities prior to the installation or reconfiguration of the facilities.

To prevent a Net-Metering Customer from back-feeding a de-energized line, the customer shall install a manual disconnect switch with lockout capability that is accessible to utility personnel at all hours. This requirement for a manual disconnect switch will be waived if the following three conditions are met: 1) The inverter equipment must be designed to shut down or disconnect and cannot be manually overridden by the customer upon loss of utility service; 2) The inverter must be warranted by the manufacturer to shut down or disconnect upon loss of utility service; and 3) The inverter must be properly installed and operated, and inspected and/or tested by utility personnel.

Customer, at his own expense, shall meet all safety and performance standards established by local and national electrical codes including the National Electrical Code (NEC), the Institute of Electrical and Electronics Engineers (IEEE), the National Electrical Safety Code (NESC), and Underwriters Laboratories (UL).

Customer, at his own expense, shall meet all safety and performance standards adopted

by the utility and filed with and approved by the Commission that are necessary to assure safe and reliable operation of the Net Metering Facility to the utility's system.

Customer shall not commence Parallel Operation of the Net-Metering Facility until the Net Metering Facility has been inspected and approved by the Electric Utility. Such approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Electric Utility's approval to operate the Customer's Net-Metering Facility in parallel with the Utility's electrical system should not be construed as an endorsement, confirmation, warranty, guarantee, or representation concerning the safety, operating characteristics, durability, or reliability of the Customer's Net-Metering Facility.

Section 5. Modifications or Changes to the Net-Metering Facility Described in Part 1, Section 2

Prior to being made, the Customer shall notify the Electric Utility of, and the Electric Utility shall evaluate, any modifications or changes to the Net-Metering Facility described in Part 1, Standard Information, Section 2 of the Standard Interconnection Agreement for Net-Metering Facilities. The notice provided by the Customer shall provide detailed information describing the modifications or changes to the Utility in writing, including a revised Standard Interconnection Agreement for Net-Metering Facilities that clearly identifies the changes to be made. The Electric Utility shall review the proposed changes to the facility and provide the results of its evaluation to the Customer, in writing, within thirty (30) calendar days of receipt of the Customer's proposal. Any items that would prevent Parallel Operation due to violation of applicable safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

If the Customer makes such modification without the Electric Utility's prior written authorization and the execution of a new Standard Interconnection Agreement, the Electric Utility shall have the right to suspend Net-Metering service pursuant to the procedures in Section 6 of the Commission's General Service Rules.

A Net-Metering Facility shall not be modified or changed to generate electrical energy in excess of the amount necessary to offset all of the Net-Metering Customer requirements for electricity.

Section 6. Maintenance and Permits

The customer shall obtain any governmental authorizations and permits required for the construction and operation of the Net-Metering Facility and interconnection facilities. The Customer shall maintain the Net-Metering Facility and interconnection facilities in a safe and reliable manner and in conformance with all applicable laws and regulations.

Section 7. Access to Premises

The Electric Utility may enter the Customer's premises to inspect the Customer's protective devices and read or test the meter. The Electric Utility may disconnect the interconnection facilities without notice if the Electric Utility reasonably believes a

hazardous condition exists and such immediate action is necessary to protect persons, or the Electric Utility's facilities, or property of others from damage or interference caused by the Customer's facilities, or lack of properly operating protective devices.

Section 8. Indemnity and Liability

The following is Applicable to Agreements between the Electric Utility and to all Customers except the State of Arkansas and any entities thereof, local governments and federal agencies:

Each Party shall indemnify the other Party, its directors, officers, agents, and employees against all loss, damages, expense and liability to third persons for injury to or death of persons or injury to property caused by the indemnifying party's engineering, design, construction, ownership, maintenance or operations of, or the making of replacements, additions or betterment to, or by failure of, any of such Party's works or facilities used in connection with this Agreement by reason of omission or negligence, whether active or passive. The indemnifying Party shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity. It is the intent of the Parties hereto that, where negligence is determined to be contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence. Nothing in this paragraph shall be applicable to the Parties in any agreement entered into with the State of Arkansas or any entities thereof, or with local governmental entities or federal agencies. Furthermore, nothing in this Agreement shall be construed to waive the sovereign immunity of the State of Arkansas or any entities thereof. The Arkansas State Claims Commission has exclusive jurisdiction over claims against the state.

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to or any liability to any person not a Party to this Agreement. Neither the Electric Utility, its officers, agents or employees shall be liable for any claims, demands, costs, losses, causes of action, or any other liability of any nature or kind, arising out of the engineering, design, construction, ownership, maintenance or operation of, or the making of replacements, additions or betterment to, or by failure of, the Customer's facilities by the Customer or any other person or entity.

Section 9. Notices

The Net-Metering Customer shall notify the Electric Utility of any changes in the information provided herein.

All written notices shall be directed as follows:

Attention:
[Electric Utility Agent or Representative]
[Electric Utility Name and Address]

Attention:
[Customer]
Name:_____
Address: _____

City:_____
Customer notices to Electric Utility shall refer to the Customer's electric service account number set forth in Section 1 of this Agreement.

Section 10. Term of Agreement
The term of this Agreement shall be the same as the term of the otherwise applicable standard rate schedule. This Agreement shall remain in effect until modified or terminated in accordance with its terms or applicable regulations or laws.

Section 11. Assignment
This Agreement and all provisions hereof shall inure to and be binding upon the respective Parties hereto, their personal representatives, heirs, successors, and assigns. The Customer shall not assign this Agreement or any part hereof without the prior written consent of the Electric Utility, and such unauthorized assignment may result in termination of this Agreement.

Section 12. Net-Metering Customer Certification
I hereby certify that all of the information provided in this Agreement is true and correct, to the best of my knowledge, and that I have read and understand the Terms and Conditions of this Agreement.
Signature: _____ Date: _____
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Dated this _____ day of _____, 20__.

Customer:	Electric Utility:
_____	_____
By: _____	By:_____
Title: _____	Title:_____
Mailing Address:	Mailing Address:
_____	_____
_____	_____
E-mail Address:	E-mail Address:
_____	_____

STANDARD INTERCONNECTION AGREEMENT FOR NET-METERING FACILITIES

Disclaimer

POSSIBLE FUTURE RULES OR RATE CHANGES, OR BOTH AFFECTING YOUR NET-METERING FACILITY

The following is a supplement to the Interconnection Agreement you signed with _____[Electric Utility].

1. Electricity rates, basic charges, and service fees, set by [Electric Utility] and approved by the Arkansas Public Service Commission (Commission), are subject to change.

2. I understand that I will be responsible for paying any future increases to my electricity rates, basic charges, or service fees from [Electric Utility].

3. My Net-Metering System is subject to the current rates of [Electric Utility], and the rules and regulations of the Commission. The [Electric Utility] may change its rates in the future with approval of the Commission or the Commission may alter its rules and regulations, or both may happen. If either or both occurs, my system will be subject to those changes.

By signing below, you acknowledge that you have read and understand the above disclaimer.

_____
Name (printed)

_____
Signature

_____
Date

APPENDIX A-1

PRELIMINARY INTERCONNECTION SITE REVIEW REQUEST

I. STANDARD INFORMATION

Section 1. Customer Information

Name:_____
Contact Person:_____
Mailing Address:_____
City:_____ State: _____ Zip Code: _____
Facility Location (if different from above):_____
Daytime Phone: _____ Evening Phone: _____
E-Mail Address:_____Fax:_____
If the requested point of interconnection is the same as an existing electric service, provide the electric service account number:_____
Additional Customer Accounts (from electric bill) to be credited with Net Excess Generation:_____
Annual Energy Requirements (kWh) in the previous twelve (12) months for the account physically attached to the Net-Metering Facility and for any additional accounts listed (in the absence of historical data reasonable estimates for the class and character of service may be made):_____

Section 2. Generation Facility Information

System Type: Solar Wind Hydro Geothermal Biomass Fuel Cell Micro Turbine (circle one)
Generator Rating (kW): _____ AC or DC (circle one)
Expected Capacity Factor: _____
Expected annual production of electrical energy (kWh) of the facility calculated using industry recognized simulation model (PVWatts, etc):_____

Section 3. Interconnection Information

Attach a detailed electrical diagram showing the configuration of all generating facility equipment, including protection and control schemes.
Requested Point of Interconnection:_____
Customer-Site Load (kW) at Net-Metering Facility location (if none, so state):
_____
Interconnection Request: Single Phase:_____Three Phase:_____

Section 4. Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Preliminary Interconnection Site Review is true and correct.
Signature: _____ Date: _____

II. TERMS AND CONDITIONS

Section 1. Requirements for Request

For the purpose of requesting that the Electric Utility conduct a preliminary interconnection site review for a proposed Net-Metering Facility pursuant to the requirement of Rule 2.06.B.4, or as otherwise requested by the customer, the customer shall notify the Electric Utility by submitting a completed Preliminary Interconnection Site Review Request. The customer shall submit a separate Preliminary Interconnection Site Review Request for each point of interconnection if information about multiple points of interconnection is requested. Part 1, Standard Information, Sections 1 through 4 of the Preliminary Interconnection Site Review Request must be completed for the notification to be valid. If mailed, the date of notification shall be the third day following the mailing of the Preliminary Interconnection Site Review Request. The Electric Utility shall provide a copy of the Preliminary Interconnection Site Review Request to the customer upon request.

Section 2. Utility Review

Following submission of the Preliminary Interconnection Site Review Request by the customer the Electric Utility shall review the plans of the facility interconnection and provide the results of its review to the customer, in writing, within 30 calendar days. If the customer requests that multiple interconnection site reviews be conducted the Electric Utility shall make reasonable efforts to provide the customer with the results of the review within 30 calendar days. If the Electric Utility cannot meet the deadline it will provide the customer with an estimated date by which it will complete the review. Any items that would prevent Parallel Operation due to violation of safety standards and/or power generation limits shall be explained along with a description of the modifications necessary to remedy the violations.

The preliminary interconnection site review is non-binding and need only include existing data and does not require the Electric Utility to conduct a study or other analysis of the proposed interconnection site in the event that data is not readily available. The Electric Utility shall notify the customer if additional site screening may be required prior to interconnection of the facility. The customer shall be responsible for the actual costs for conducting the preliminary interconnection site review and any subsequent costs associated with site screening that may be required.

Section 3. Application to Exceed 300 kW Net-Metering Facility Size Limit

This Preliminary Interconnection Site Review Request and the results of the Electric Utility's review of the facility interconnection shall be filed with the Commission with the customer's application to exceed the 300 kW facility size limit pursuant to Net Metering Rule 2.05.B.4.

Section 4. Standard Interconnection Agreement

The preliminary interconnection site review does not relieve the customer of the requirement to execute a Standard Interconnection Agreement prior to interconnection of the facility.

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
Replacing:	Sheet No.	
Name of Company		
Kind of Service: Electric	Class of Service: All	
Part III. Rate Schedule No. X		
Title: NET-METERING		PSC File Mark Only

X. NET-METERING

X.1. AVAILABILITY

X.1.1. To any residential or any other customer who takes service under standard rate schedule(s) _____ (list schedules) who is an owner of a Net-Metering Facility and has obtained a signed Standard Interconnection Agreement for Net-Metering Facilities with an Electric Utility. The generating capacity of Net-Metering Facilities may not exceed the greater of: 1) twenty-five kilowatts (25 kW) or 2) one hundred percent (100%) of the Net-Metering Customer's highest monthly usage in the previous twelve (12) months for Residential Use. The generating capacity of Net-Metering Facilities may not exceed three hundred kilowatts (300 kW) for non-residential use unless otherwise allowed by the Commission. Net-Metering is intended primarily to offset part or all of the customer's energy use.

The provisions of the customer's standard rate schedule are modified as specified herein.

X.1.2. Net-Metering Customers taking service under the provisions of this tariff may not simultaneously take service under the provisions of any other alternative source generation or co-generation tariff except as provided in the Net-Metering Rules.

X.2. MONTHLY BILLING

X.2.1. The Electric Utility shall separately meter, bill, and credit each Net-Metering Facility even if one (1) or more Net-Metering Facilities are under common ownership.

X.2.2. On a monthly basis, the Net-Metering Customer shall be billed the charges applicable under the currently effective standard rate schedule and any appropriate rider

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
Replacing:	Sheet No.	
Name of Company		
Kind of Service: Electric	Class of Service: All	
Part III. Rate Schedule No. X		
Title: NET-METERING		PSC File Mark Only

schedules. Under Net-Metering, only the kilowatt hour (kWh) units of a Net–Metering Customer's bill are netted.

X.2.3. If the kWhs supplied by the Electric Utility exceeds the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility during the Billing Period, the Net-Metering Customer shall be billed for the net billable kWhs supplied by the Electric Utility in accordance with the rates and charges under the Net-Metering Customer's standard rate schedule.

X.2.4. If the kWhs generated by the Net-Metering Facility and fed back to the Electric Utility during the Billing Period exceed the kWhs supplied by the Electric Utility to the Net-Metering Customer during the applicable Billing Period, the Electric Utility shall credit the Net-Metering Customer with any accumulated Net Excess Generation in the next applicable Billing Period.

X.2.5. Net Excess Generation shall first be credited to the Net-Metering Customer's meter to which the Net-Metering Facility is physically attached (Generation Meter).

X.2.6. After application of X.2.5 and upon request of the Net-Metering Customer pursuant to X.2.8, 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 Net-Metering Customer.

X.2.7. Net Excess Generation shall be credited as described in X.2.5 and X.2.6 during subsequent Billing Periods; the Net Excess Generation Credits remaining in a Net-Metering Customer's account at the close of a billing cycle shall not expire and shall be carried forward to subsequent billing cycles indefinitely. For Net Excess Generation Credits older than twenty-four (24) months, a Net-Metering Customer may elect to have the Electric Utility purchase the Net Excess Generation Credits in the Net-Metering Customer's account at the Electric Utility's estimated annual average cost rate for wholesale energy if the sum to be paid to the Net-Metering Customer is at least one hundred dollars ($100). An Electric Utility shall purchase at the Electric Utility's estimated annual average Avoided Cost rate for wholesale energy any Net Excess Generation

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
Replacing:	Sheet No.	
Name of Company		
Kind of Service: Electric	Class of Service: All	
Part III. Rate Schedule No. X		
Title: NET-METERING		PSC File Mark Only

Credits remaining in a Net-Metering Customer's account when the Net-Metering Customer: 1) ceases to be a customer of the Electric Utility; 2) ceases to operate the Net-Metering Facility; or transfers the Net-Metering Facility to another person.

When purchasing Net Excess Generation Credits from a Net-Metering Customer, the Electric Utility shall calculate the payment based on its annual average avoided energy costs in the applicable Regional Transmission Organization for the current year.

X.2.8. 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:

(a) The Net-Metering Customer must give at least 30 days' notice to the Electric Utility.

(b) The Additional Meter(s) must be identified at the time of the request. Additional Meter(s) shall be under common ownership within a single Electric Utility's service area; shall be used to measure the Net-Metering Customer's requirements for electricity; may be in a different class of service than the Generation Meter; shall be assigned to one, and only one, Generation Meter; shall not be a Generation Meter; and shall not be associated with unmetered service.

(c) 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.

X.2.9. Any Renewable Energy Credit created as the result of electricity supplied by a Net-Metering Customer is the property of the Net-Metering Customer that generated the Renewable Energy Credit.

Appendix B

ARKANSAS PUBLIC SERVICE COMMISSION

Original	Sheet No.	
Replacing:	Sheet No.	
Name of Company		
Kind of Service: Electric	Class of Service: All	
Part III. Rate Schedule No. X		
Title: NET-METERING		PSC File Mark Only