ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF FORMULA RATE PLAN	)	
FILINGS OF ENTERGY ARKANSAS, INC.,	)	DOCKET NO. 16-036-FR
PURSUANT TO APSC DOCKET NO. 15-015-U	)	ORDER NO. 40

ORDER

In this Order, the Arkansas Public Service Commission (Commission) approves the agreed-upon terms of the Stipulation filed by the Parties on October 30, 2020, (Stipulation) and resolves the single disputed issue identified in the Stipulation concerning the 2020 Evaluation Report.[1]

I. Procedural History

On July 7, 2020, Entergy Arkansas, LLC (EAL or the Company) filed an Application pursuant to and in compliance with the provisions of its Rate Schedule No. 44, Formula Rate Plan Rider (Rider FRP), including Attachment F, the Formula Rate Protocols; Ark. Code Ann. §§ 23-4-1201, *et seq.*; and the applicable Commission *Rules of Practice and Procedure* (RPPs). The Application included the EAL Rider FRP 2020 Evaluation Report for the projected year ending December 31, 2021, which evaluates

[1] Pursuant to Order Nos. 28 and 29, the review of EAL's 2020 Evaluation Report and EAL's request for an extension of its FRP were separated and set with separate schedules. In addition, pursuant to Order Nos. 30 and 32, EAL designated the portions of its direct testimony supporting the 2020 Evaluation Report and that supporting the FRP Extension request.

EAL's earnings for the formula rate review test period. In support of its Application, EAL filed the Direct Testimonies of Laura R. Landreaux, William J. Cunningham, Barbara L. Casey, Lydia W. Joseph, Myra L. Talkington, William Charles John, Brad Cullipher, Kurtis W. Castleberry, Melanie L. Taylor, and Mark E. Skartvedt.

On August 12, 2020, EAL filed its response to the Quality of Service Audit for the years of 2018 and 2019.

On August 17 and 18, 2020, in compliance with Order No. 26 concerning the appropriate state income tax rate for use in the Projected Year, EAL filed a Revised Application, Revised Rider FRP schedules, and the Revised Direct Testimony of Ms. Landreaux, Mr. Cunningham, Ms. Casey, and Ms. Talkington.

In addition to EAL, the parties to this Docket are Arkansas Electric Energy Consumers, Inc. (AEEC), the Hospitals and Higher Education Group (HHEG), the Arkansas Attorney General Leslie Rutledge (AG), and the General Staff (Staff) of the Commission.[2]

On October 5, 2020, in accordance with the procedural schedule set by Order No. 28, the AG filed a Statement of Errors and Objections (E&O) with the Direct Testimony of David E. Dismukes and Scott Norwood; AEEC filed a Statement of E&O with the Direct Testimony of Billie S. LaConte; HHEG filed a letter stating it would not be filing a Statement of E&O; and Staff filed a Presentation of E&O with the Supporting Testimonies of Robert H. Swaim, Troy Eggleton, Judy Kay Lindholm, Dan Daves, Jeffrey J. Roberts, Jeff Hilton, and Middleton Ray.

[2] The Federal Executive Agencies were granted intervention by Order No. 27 but later requested to be excused from the 2020 Evaluation Report portion of the Docket and participate only in the FRP Extension portion, which was granted by Order No. 34. Walmart, Inc. was granted intervention by Order No. 31, limited to the FRP Extension portion of the Docket.

On October 20, 2020, EAL filed a Response to E&Os and the Rebuttal Testimonies of Mr. Cunningham, Ms. Casey, Stacey L. Whaley, Ms. Talkington, Mr. John, Mr. Castleberry, Ms. Taylor, and Mr. Skartvedt,

On October 28, 2020, all Parties filed their *Joint Issues List, Notice of Need for Live Hearing to Conduct Cross Examination, and Request for Extension to File Settlement* (Joint Issues List). On October 29, 2020, Order No. 35 allowed the Parties to amend the Joint Issues List to narrow or eliminate any items currently identified as Contested Issues, to be filed no later than noon on October 29, 2020.

Nothing was filed by the October 29 deadline, but on October 30, 2020, the Parties filed a *Stipulation, Amended Joint Issues List, and Request to Excuse Witnesses* (Stipulation), with the Supporting Testimonies of Mr. Cunningham on behalf of EAL, Donna Gray on behalf of Staff, and Christina L. Baker on behalf of the AG.[3] In the Stipulation, the Parties asked the Commission to approve the Stipulation with respect to the agreed-upon terms; issue a decision on the remaining disputed issue; and rule on the Parties' request to excuse witnesses and proposed hearing procedures. The Commission, by Order No. 36 filed on November 2, 2020, set hearing procedures. Written Opening Statements were filed by the Parties on November 3, 2020. Hearing was held on November 4, 2020. On November 5, 2020, Order No. 37 denied EAL's oral request at the hearing to file post-hearing briefs.

No public comments have been submitted since EAL's Application was filed on July 7, 2020.

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[3] Errata to Ms. Baker's and Ms. Gray's testimonies, as well as Mr. Cunningham's Supplemental Settlement Testimony, were filed on November 2, 2020.

II. Summary of the Parties' Positions Before Stipulation

A. EAL's Application and Direct Testimony

EAL's Application states that its Earned Rate of Return on Common Equity (ERR) reflected in the 2020 Evaluation Report is 7.86 percent for the Projected Year and is 9.07 percent for the Historical Year. As a result, the revenue change necessary to achieve EAL's Targeted Rate of Return (TRR) of 9.75 percent is $103.2 million. The total revenue change is based upon a Projected Year deficiency of approximately $79.3 million for 2021 and a deficiency of approximately $23.9 million in the Historical Year Netting Adjustment for 2019. The revenue change necessary to achieve the 9.75 percent return is above the four percent cap and therefore EAL's proposed Rider FRP Revenue Change is limited to $74.3 million. Revised Application ¶¶ 9-10 (Doc. #522).

Ms. Casey explains that the significant drivers of the proposed increase in revenue for the 2021 Projected Year include (1) a change in Cost of Capital primarily due to an increase in Weighted Average Cost of Capital (WACC) of 0.13 percent, an increase in Net Plant and the association depreciation expense, an increase in *Ad Valorem* Tax, and an increase in Other Rate Base; (2) an increase in Distribution Operations and Maintenance (O&M) costs; (3) an increase in Administrative and General (A&G) O&M costs; and (4) a decrease in rate schedule revenues. She adds that these increases were offset by a decrease in O&M expense, primarily attributable to Production O&M costs, a decrease in other income tax and revenue related taxes, a decrease in Transmission O&M costs, a decrease in Customer Accounting and Sales Expenses costs, and an increase in Miscellaneous Revenues. Casey Revised Direct at 12-13 (Doc. #518).

Ms. Talkington provides the rate class revenue change for each rate class and states that a residential customer using 1,000 kWh will see a monthly bill increase of $4.49 or 4.09 percent. Talkington Revised Direct at 16-17 (Doc. #519).

B. Other Parties' Statements of Errors and Omissions

AEEC

In its Statement of E&O, AEEC identifies the following errors and objections:

> a. EAL's 2020 Historical Year netting adjustment is improper and fails to conform to the language in the Formula Rate Plan (FRP) tariff. The proposed netting adjustment also constitutes prohibited retroactive ratemaking. It improperly seeks to exclude the FRP revenues that were recovered in the 2020 Historical Year because the calendar year 2017 netting adjustment exceeded the 4% cap. Excluding the 2020 Historical Year's FRP revenues as a way to recover costs that exceeded the 4% cap three years ago is retroactive ratemaking. EAL's failure to properly recognize the FRP revenues overstates the Historical Year's netting adjustment. When the 2020 Historical Year's netting adjustment is revised to appropriately include the FRP revenues, this lowers the netting adjustment to a negative number.
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> b. EAL overstates its Projected Year long-term debt cost. EAL's debt issuance on September 8, 2020 substantially reduced its long-term debt cost. Further, the interest rate for the planned debt issuance in the Projected Year is unrealistically high, which increases the Projected Year's benchmark rate of return on rate base (BRORB). Adjusting the Projected Year's long-term debt cost to include the recent debt issuance and reducing the interest rate for the projected debt issuance reduces the BRORB by 20 basis points and reduces the ROE Band Rate Adjustment by $21.6 million to $57.7 million.

AEEC states that these recommended adjustments reduce EAL's revenue deficiency for the Projected Year to a much lower amount, which is below the four percent cap. AEEC E&O ¶ 8 (Doc. #569). AEEC requests that the Commission (1) reject EAL's proposed 2020 Historical Year netting adjustment and reduce EAL's 2020 Historical Year netting adjustment to a negative number; (2) reduce EAL's Projected Year BRORB to 3.7507 percent, which reduces the revenue deficiency to $57.7 million; and (3) in total, reduce

EAL's total 2020 Projected Year revenue adjustment to a much smaller amount than requested, which is below the four percent cap. *Id.* ¶ 20.

AG

In her Statement of E&O, the AG notes that if EAL's request is approved, EAL ratepayers will always have had a rate increase during the five-year FRP initial term. The AG also observes that EAL's 2020 FRP request represents a 5.8 percent increase in base rates, which, if approved, will result in a cumulative base rate increase of 21 percent since the adoption of the FRP in EAL's last rate case, which also increased base rates by 20.76 percent. Without the statutory cap, the AG notes that the increase would have been $103.2 million in one year alone. AG E&O ¶¶ 7-8 (Doc. #559).

The AG proposes the following recommended adjustments to EAL's FRP:

> a. Based on the testimony of AG witness David Dismukes, the Commission should remove $10,813 from the Historic Year and $12,910 from the Projected Year to reflect removal of the Company's annual membership dues in the Southeast Electric Exchange ("SEE") to reflect the lack of direct ratepayer benefit.
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> b. Based on the testimony of AG witness David Dismukes, the Commission should remove approximately $246.6 million in incremental plant investments from the Historic Year netting adjustment because the investment are not associated with investments identified by the Company in its 2019 FRP filing, or alternatively shown to be prudent. This proposed adjustment also reduces depreciation expenses for the Historic Year by an additional $6.0 million.
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> c. Based on the testimony of AG witness Scott Norwood, the Commission should cap EAL's unjustified projected 2020 and 2021 blanket capital additions to reflect more reasonable levels based on historic averages, resulting in a $55.6 million reduction to EAL's projected blanket capital additions during 2020, and a $49.6 million reduction to the Company's projected increase in blanket capital additions during 2021. This proposed adjustment also reduces depreciation expenses for the Projected Year by an additional $2.1 million.

> d. Based on the testimony of AG witness Scott Norwood, the Commission should reduce the Company's Projected Year forecast to include the estimated customer benefits of AMI during the PY that were used to justify the AMI project, but not accounted for in EAL' Rider FRP analysis.
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> e. Based on the testimony of AG witness Scott Norwood, the Commission should reduce EAL's Projected Year non-fuel O&M expenses for the White Bluff, Independence, and Lake Catherine generating stations to reflect a more normal ongoing level of O&M expense based upon historic levels over the last five years.

Id. ¶ 18 (footnotes omitted). The incorporation of these recommended adjustments to EAL's proposed FRP results in an incremental FRP revenue requirement for the Projected Year of approximately $51 million, a reduction of approximately $29.6 million compared to EAL's proposed Projected Year revenue adjustment of $80.6 million. The recommended adjustments also result in an incremental Historical Year netting adjustment of approximately negative $9.4 million, a reduction of approximately $14.5 million compared to EAL's proposed Historical Year netting adjustment of $23.9 million. In total, the AG's recommended FRP adjustment is approximately $60.4 million. *Id.* ¶ 19.

The AG recommends that the Commission (1) set explicit goals for EAL's reliability performance to ensure that ratepayers receive some form of benefit from the FRP process; (2) conduct a review of EAL's load forecasting process to ensure that it comports with accepted best practices; and (3) order EAL to evaluate the economic viability of its existing coal- and natural gas-fired generating units and present the results of that analysis in the next FRP or base rate case, whichever is sooner. Further, the AG suggests that EAL modify its planned capital investments and expenses to reduce the strain on Arkansas residents during the COVID-19 pandemic. *Id.* ¶¶ 21-25.

Staff

In its Statement of E&O, Staff's Cumulative Total Rate Change in Rider FRP Revenue (Rate Change) is $175,883,236. This change is a decrease of EAL's requested amount of $268,686,885 by $92,803,649. Staff's Recommended ROE Band Rate Adjustment for the Projected Year is $51,019,648, which is a reduction in EAL's request by $28,285,871, and a further reduction in the Netting of the Historical Year of $91,267,988 to -$67,400,527. Staff E&O ¶ 5 (Doc. #571). Staff's recommended BRORB for the Projected Year is 5.1394 percent, which is a reduction from EAL's request of 5.3361 percent and Staff recommends a BRORB of 5.1037 percent instead of the 5.0964 percent that EAL requested for the Historical Year. *Id*. ¶¶ 10, 13.

Staff's Total Rate Base for the Projected Year is $8,326,769,037, which is a reduction of $54,219,650, and Staff's adjustment reduces gross plant for Allowance for Funds Used During Construction (AFUDC) that was already collected in EAL's Rider FRP. *Id*. ¶¶ 14-15. Staff's Projected Year Total Utility Operating Expense is $1,156,325,211, which is a reduction of $1,732,810; Staff's adjustments include reducing payroll and related expense, amortization expense and income tax expense. *Id*. ¶¶ 18-22.

Staff's Total Rate Base for the Historical Year is $7,476,306,376 which is a reduction of $17,982,478. Staff reduces gross plant for AFUDC that was already collected in EAL's Rider FRP. *Id*. ¶¶ 23-24. Staff revises the appropriate dollar amount of Historical Year revenues included on Attachment D.6. *Id*. ¶ 26. Staff's Total Utility Operating Expense for the Historical Year is $1,074,968,871 a decrease of $20,447,499. *Id*. ¶¶ 27-29.

Staff's Total Annualized Filing Year revenues decreased by $21,015,325 based on updated EAL information. *Id*. ¶ 30.

C. EAL's Response to E&Os

EAL disputes Staff's adjustment to Working Capital Assets (WCA) by $6,153,846 in the Historical Year as a result of Staff's recommendation to remove the settlement amount of $80,000,000 from the U.S. Department of Energy. EAL states that even if the adjustment were appropriate and accepted by the Commission, a simultaneous adjustment to remove the credit side of the entry should occur as well. EAL Response at 8.

EAL rebuts Staff's recommendations pertaining to: (a) the use of the Generally Accepted Accounting Principles accounting and reporting for the re-measurement of Accumulated Deferred Income Tax (ADIT) in the period of enactment of the step down of the corporate state income tax rate to determine the customer giveback amount; (b) the comparison of the Arkansas tax rate change to the Tax Cuts and Jobs Act (TCJA); and (c) the reduction to income tax expense in the Historical Year for the Arkansas Excess ADIT. *Id*. at 8-9.

EAL rebuts Staff and AEEC concerning the Adjusted Historical Rider FRP Revenue used in the 2019 Historic Year Netting Adjustment, saying that both Staff's and AEEC's positions are effectively denying EAL its Formula Rate Review Act (FRRA) and Rider FRP right to and obligation of an annual Netting Adjustment. *Id*. at 10-12. EAL disagrees with Staff's recommendations to adjust AFUDC and the BRORB. *Id*. at 12-15. EAL also disagrees with Staff's recommendation to reduce Projected Year payroll and related expenses by $7,931,055. *Id*. at 16-17.

EAL's revised projected Rider FRP Revenue Change is $64.3 million and proposed Rider FRP Revenue Change in this Application and revised 2019 Evaluation is $72.6 million. *Id*. at 17-18.

EAL disputes the AG's assertion that the known and measurable standard should be applied to EAL's projected year investments and expenses, and points out that the Commission has previously rejected the AG's position and should do the same in this instance. EAL disagrees with the AG's recommendation to reduce 2020 blanket capital additions by $55.6 million and 2021 blanket capital additions by $49.6 million. EAL also disagrees with the AG's conclusion that EAL's A&G expense does not compare favorably to other utilities based on two different variables in the AG's benchmarking study. *Id*. at 18-21.

EAL disagrees with the AG's recommendation to reject the guidance of the tariff on the provision of extensive information and data by EAL to support its 2020 Evaluation Report. EAL disputes the AG's proposed disallowance of costs for capital projects closed in 2019 that were not forecasted in the 2018 Evaluation Report, noting that in Order No. 21, the Commission held "neither applicable law, public policy, nor Rider FRP require that capital projects which EAL did not identify in the Projected Year of a previous Rider FRP filing be excluded from the Historic Year and Netting Adjustment." *Id*. at 21-24.

EAL observes that, as in EAL's 2017, 2018, and 2019 Rider FRP filings, the AG attempts to downplay the current effect of proposed plant investment and expense adjustments by claiming that they are merely shifted from customers to shareholders temporarily — an erroneous principle not contained in Act 725 or Rider FRP. EAL states that once again the AG offers no support for why it is necessary or appropriate to impose some further shifting of risk and rebalancing of interests beyond that already achieved through operation of Rider FRP. *Id*. at 24-25.

EAL disagrees with the AG's attempt to discredit the impact of the four percent cap mandated by Act 725. EAL states that the cap is a customer protection built into the Rider FRP framework by statute, and it is working as evidenced by each Rider FRP filing, including this year. EAL concludes that in this and any future Rider FRP filings, the projected Rider FRP Revenue Change includes prudently incurred investments on behalf of EAL customers, and the operation of the four percent cap strikes an appropriate balance as to when such investments are included in rates. *Id*. at 25-26.

EAL disagrees with the AG's explicit goals for EAL's reliability performance and states that neither Act 725 nor Rider FRP requires the Commission to adopt explicit goals for EAL's reliability performance. EAL notes that the AG has raised this issue in previous filings as well. *Id*. at 26-27.

EAL disagrees with the AG's proposal that EAL's Projected Year non-nuclear, non-fuel production O&M amounts should be reduced by $6.4 million based upon the AG's belief that this would reflect what the AG claims to be "a normal level" of expense based upon the AG's calculation of a five-year average of those costs. EAL also disagrees with the AG's recommendation to disallow recovery of EAL's Southeastern Electric Exchange annual dues of $10,813 in the Historical Year and $12,910 in the Projected Year. *Id*. at 28-30.

EAL disagrees with the following AEEC adjustments: (a) reduce EAL's 2020 Historical Year netting adjustment to a negative number; (b) reduce EAL's Projected

Year BRORB to 3.7507 percent, which reduces the revenue deficiency to $57.7 million; and (c) in total, reduce EAL's total 2020 Projected Year revenue adjustment to a much smaller amount than requested which is below the four percent cap. EAL recommends a cost of debt rate of 3.8311. *Id*. at 31-32.

III. Stipulation and Testimony

A. Terms of the Stipulation

The Stipulation starts from EAL's rebuttal case except as to the remaining Disputed Issue and except as otherwise modified by the following Agreed-Upon Terms:

> A. Long-term Debt Coupon Rate: The Company will reduce its proposed 3.5 percent long-term debt coupon rate to 2.65 percent for the Projected Year May 2021 bond issuance.
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> B. Payroll Expense: The Company accepts Staff's recommendation with respect to the Projected Year Payroll Expense. Staff's recommendation includes an increase of $2,368,295 from Staff's E&O amount, as stated in the Settling Parties' non-contested issues. For clarity, Staff is not recommending a disallowance but only a revision to the Projected Year Expense.
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> C. Working Capital Assets: The Settling Parties will utilize EAL's calculation of working capital assets as included in Barbara Casey's 2020 Evaluation Report rebuttal testimony, which does not remove the effects of the settlement amount received from the Department of Energy.
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> D. Current, Accrued and Other Liabilities ("CAOL"): Staff asserts, among other things, that the Company did not provide adequate support to demonstrate the reasonableness of the proposed negative CAOL balance, and EAL maintains its position that it demonstrated the reasonableness of the negative CAOL balance. The Settling Parties agree that, for purposes of settlement only of the 2020 Evaluation Report, CAOL for the Projected Year 2021 will be set to 1% of the total capitalization of the cost of capital. Additionally, for the netting of the Projected Year 2021, absent otherwise being resolved by the Commission prior to the year in which the netting period is considered, the floor for CAOL would remain at 1%. Notwithstanding, and consistent with Section 4 below, the Settling Parties agree that the adjustment for this item is for settlement purposes only and has no precedential or persuasive value whatsoever, including particularly as to any other issues relative to the Company's cumulative pension accounts.
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> E. State Income Tax: The Settling Parties accept for purposes of this Stipulation only EAL's calculation related to Historical Year Excess

ADIT of $20,296,958, as adjusted by EAL witness Stacey Whaley beginning on page 8 of her 2020 Evaluation Report rebuttal testimony to $9,789,673. The remaining Mark-to-Market deficit ADIT in the amount of $10,936,518 is subject to the pending outcome of the 2014-2015 Internal Revenue Service("IRS") audit and results in a deficit ADIT amount, as summarized by Ms. Whaley at page 9 of her 2020 Evaluation Report rebuttal testimony. The results of the IRS audit are not final. To the extent that the results of the audit are final and known by December 31, 2020 and resolution of the audit results in a credit to the Company, then EAL will report the results of the audit to the other Settling Parties, and the Settling Parties will discuss an appropriate manner in which to collect the credit from EAL customers. If the results of the audit are final and known by December 31, 2020 and resolution of the audit results in a credit to customers, then EAL will issue a refund of that credit within 60 days using Rider TA. However, in the event that the results of the IRS audit are not final and known by March 31, 2021, the Company will address the adjusted Arkansas excess ADIT amount in a separate tariff docket to refund the $9,789,673 to the Company's retail customers subject to true-up; in this scenario, once the results of the IRS audit are final and known, EAL will report the results to the other Settling Parties, and the Settling Parties will discuss an appropriate manner in which to collect any credit to the Company. The Settling Parties reserve and fully maintain their respective positions as to the appropriate manner in which to collect any credits to the Company, and the process set forth in this Agreed Upon Term has no precedential or persuasive effect whatsoever on the Settling Parties' respective positions in that regard or in regard to any future tax adjustment issue.

F. AFUDC: For purposes of this Stipulation only and only as to the 2020 Evaluation Report, the Historical Year and Projected Year will not include any adjustments to eliminate AFUDC from plant additions.

G. Forecasting and Projected Year Blanket Capital Additions: The Company will provide EAL's four-year average historical plant balances for blanket funding projects to the other Settling Parties, which shall form the basis for the 2021 Projected Year blanket funding projects.

H. Advanced Metering Infrastructure ("AMI") Benefits: EAL will decrease its 2021 Projected Year operation and maintenance costs by increasing AMI benefits by $1.5 million with respect to benefits arising as a result of Docket No. 16-060-U.

I. Economic Analysis of Existing Coal-fired Generating Units: As part of EAL's 2021 Integrated Resource Plan ("IRP") modeling, EAL will include portfolio scenarios that assume deactivation dates that are earlier than the current planning assumption for its owned generating units that are planned to deactivate early in the modeling horizon. The IRP Report will include an assessment of the impacts on the portfolio cost compared to alternative portfolios, as well as the viability of such advanced deactivations.

> J. Reliability Performance Goals: The AG has raised questions with respect to the Company's reliability performance, and the Company believes that discussions regarding extension of Rider FRP may result in an amicable resolution of this issue. The Settling Parties will work toward that goal, with the understanding that if resolution requires tariff amendments, any such amendments to Rider FRP would be handled in a compliance filing in a separate docket.
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> K. AG Deferred Issues: The AG has identified issues with the current and past Rider FRP filings by the Company that she believes warrant further discussion and consideration in the Company's request for an extension of the FRP. These issues include (1) justification for the inclusion of significant capital projects in the netting adjustment that were not identified in Projected Year rate base; (2) the designation of information as Confidential and Highly Sensitive Proprietary Information; (3) load forecasting process; and (4) rate mitigation strategies to address the impact of COVID-19 and other significant events, which impact ratepayers' ability to afford and pay their utility bills. The Settling Parties agree to work toward resolution of these issues before the extension of Rider FRP is considered by the Commission.

Stipulation at 15-19 (footnotes omitted).

B. Stipulation Testimony

EAL

EAL witness Cunningham provides an overview of the Stipulation and states that the outcome ultimately achieved by the Stipulation, for purposes of resolving matters set forth in EAL's Evaluation Report, produces a just and reasonable rate adjustment, is in keeping with the overarching goals of Rider FRP, and therefore is consistent with the public interest. He explains that the Parties identified several issues for purposes of the Stipulation beyond the Staff adjustments that EAL already had accepted in its Response to E&Os or proposed in Rebuttal Testimony and summarizes those additional adjustments. He notes that the difference in EAL's and Staff's Stipulation adjustments for Projected Year payroll is due to EAL's adjustment including payroll-related expenses such as taxes, while Staff's increase did not, and reflects that EAL has updated its calculation to reflect Staff's adjustment. Mr. Cunningham also corrects the revenue requirements reduction associated with the blanket project adjustment from $0.4 million to $0.8 million, as the former did not account for the depreciation-related expenses. Cunningham Supplemental Settlement at 3-7 (Doc. #632).

Mr. Cunningham elaborates on the Staff adjustments that EAL accepted in Rebuttal Testimony and the additional adjustment on bond issuance costs that EAL made in response to the E&Os, which the Stipulation calls for EAL to use in its May 2021 issuance. He summarizes the remaining adjustments proposed in the Stipulation and notes that the agreed-upon projected 2020 Rider FRP revenue change in the Stipulation does not exceed the limit of the Rider FRP revenue constraint calculation. *Id*. at 7-9.

Mr. Cunningham details the billing factors for each rate class resulting from the Stipulation and states that for a customer in the residential customer class using 1,000 kWh per month, the agreed-upon increase in Total Rider FRP Revenue would result in a corresponding bill increase of $4.05 per month, or a change of approximately 3.69 percent. He observes that for the Small General Service (SGS) and Large General Service (LGS) customer classes, actual bill impacts would depend on a customer's usage characteristics such as size, usage, and load factor. He states that for an SGS customer using seven kW with a load factor of 20 percent, the agreed-upon increase in Total Rider FRP Revenue would result in an increase of 3.28 percent to a total bill, while an LGS customer using 165 kW with a load factor of 55 percent would see a 3.27 percent increase due to the proposed Total Rider FRP Revenue change. *Id*. at 10-11.

Mr. Cunningham explains the non-revenue related matters agreed to by the parties and notes that the issues raised by the AG relating to reliability metrics, load forecasting process, and other issues addressed in Section 3.K of the Stipulation are appropriate to be explored in the extension phase of this Evaluation Report. Additionally, he notes that the Settling Parties have agreed to accept for purposes of this Stipulation EAL's calculation related to Excess ADIT, while the inclusion of the Mark-to-Market deficit ADIT is subject to the pending outcome of an IRS audit and will be subject to a later credit or collection. He states that as part of its 2021 Integrated Resource Plan modeling, EAL will include portfolio scenarios that assume certain deactivation dates that are earlier than the current planning assumption. *Id.* at 11-13.

Mr. Cunningham opines that the results produced under these adjustments as set forth in the Stipulation align with the overarching goals of Rider FRP to provide financial stability for EAL while gradually reflecting investments in rates, are just and reasonable, and are consistent with the public interest. *Id.* at 13-14.

<u>AG</u>

AG witness Baker supports the Stipulation and considers the relief requested to be in the public interest. She recounts the AG's recommendations in the AG's E&O and notes that those adjustments resulted in an incremental FRP revenue requirement for the 2021 Projected Year of approximately $51.0 million, a reduction of approximately $29.6 million, and an incremental 2019 Historical Year netting adjustment of approximately $9.4 million, a reduction of approximately $14.5 million. Baker Stipulation at 4-7 (Doc. #625, as corrected by Doc. #629).

Ms. Baker testifies that while EAL, Staff, AEEC, and the AG have all advocated diverse positions, all are willing to accept the Stipulation as a compromise on many of the issues. She maintains that the Stipulation is within the range of reasonable litigation outcomes and represents a reasonable result that is in the public interest. *Id*. at 8.

Ms. Baker states that the Stipulation recognizes the concerns of the AG in this Docket and addresses them in a reasonable manner in view of litigation risk and taking into account EAL's current FRP extension request. She testifies that while the AG would prefer that the recommendations in her case be accepted in all particulars, the Stipulation provides additional benefits for ratepayers compared to EAL's initial proposal and sets the stage for discussion to help ensure additional ratepayer benefits in future FRP and other regulatory proceedings. She says that the Stipulation addresses the AG's concerns in the following ways:

> 1. EAL has agreed that its 2021 Projected Year blanket funding will be based on historical average plant balances for blanket funding projects. This will help alleviate concerns the Attorney General has expressed regarding unreasonable over-projections which do not correlate in a reasonable manner to the Company's historical spending trends, and the use of blanket funding which allow the Company to have an approved capital investment balance and decide later where to spend it.
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> 2. EAL has agreed to decrease its 2021 Projected Year operations and maintenance ("O&M") costs by reflecting an additional $1.5 million in customer benefits arising from EAL's Advanced Metering Infrastructure ("AMI") project. The exact amount of these benefits will also be reviewed in the netting of the 2021 Historic Year. This will help ensure that customers who will pay all costs of deploying AMI will actually receive the promised benefits of AMI that the Company used to justify the project in Docket No. 16-060-U.
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> 3. EAL has agreed to perform an analysis of its existing coal and natural-gas generating units as a part of its Integrated Resource Plan ("IRP"). This will address the Attorney General's concerns regarding the reasonableness of EAL's forecasted non-fuel O&M expenses for the White Bluff, Independence, and Lake Catherine generating stations and the

> future economic viability of all of its existing coal-and natural-gas fired generating units.
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> 4. EAL has acknowledged the Attorney General's concerns regarding the Company's reliability performance and her desire for reliability performance goals. To that end, the Settling Parties have agreed to address this issue within the context of EAL's FRP Extension Request. This will address the Attorney General's position that if customers are asked to pay for additional investment by EAL, it is reasonable to expect increased reliability in return.

Id. at 8-10.

Ms. Baker identifies issues with the current and past Rider FRP filings by EAL that warrant further discussion and consideration in EAL's request for an extension of the FRP, including (1) justification for the inclusion of significant capital projects in the netting adjustment that were not identified in Projected Year rate base; (2) the designation of information as Confidential and Highly Sensitive Proprietary Information; (3) load forecasting process; and (4) rate mitigation strategies to address the impact of COVID-19 and other significant events, which impact ratepayers' ability to afford and pay their utility bills. She observes that EAL has agreed to work toward resolution of these issues before the extension of Rider FRP is considered by the Commission, which will help to ensure that any extension of EAL's FRP is in the public interest as required by Ark. Code Ann. § 23-4-1208(a)(2). *Id*. at 10.

Ms. Baker testifies that the AG supports the Stipulation and considers it to be in the public interest and on that basis, recommends that the Commission approve the Stipulation. *Id*. at 10.

<u>Staff</u>

Staff witness Gray supports the Stipulation because, with few exceptions, it reflects Staff's filed E&O or modifications based on updated data and additional information. She observes that there were several instances where additional information was provided during discussions which was helpful in Staff's efforts to continue to evaluate the reasonableness of EAL's request and Staff's filed position. She notes that the Non-contested Issues included in the Parties' October 28, 2020 filing reflected several areas where Staff updated its position based on the provision of additional information and also reflected areas where EAL accepted Staff's recommendations in its filed Responsive E&O. Gray Errata Stipulation at 5 (Doc. #631).

On Stipulation 3.A.– Long-term Debt Coupon Rate, Ms. Gray testifies that what had been Issue 1 on the October 28, 2020 Issue List was resolved by EAL agreeing to use the actual 2.65 percent coupon rate on its recent debt issuance of September 11, 2020, as the projected rate for its May 2021 projected debt issuance. She estimates the difference between EAL's Rebuttal request of 3.5 percent and the Stipulation of 2.65 percent is $2.6 million. *Id*. at 5-6.

On Stipulation 3.B. – Payroll Expense, Ms. Gray states that during discussions after the filing of Staff's E&O, EAL provided additional details in support of union contract increases of $2,368,295, which Staff evaluated and determined to be reasonable and was reflected in the October 28, 2020 filing as a Non-contested Issue. She notes that Staff continued to support the reasonableness of all other aspects of its filed recommendations. She says that for the purposes of the Stipulation, EAL agreed to accept Staff's recommendation and estimates the difference between EAL's request and the Stipulation amount is $5.6 million. *Id*. at 6.

On Stipulation 3.D. – Current, Accrued and Other Liabilities (CAOL), Ms. Gray testifies that the Stipulation provides significant movement in two ways toward addressing Staff's concern on the negative CAOL balance by ensuring a minimum of 1 percent of the capital structure will be included at the zero cost of CAOL in developing the cost of capital for the 2021 Projected Year. She explains that the Stipulation further provides for that protection to remain in place unless otherwise resolved by the Commission prior to the year in which the netting period is considered, and that such resolution could come in the FRP extension phase of this Docket or a general rate case. She estimates the difference between EAL's proposed negative CAOL balance and a 1 percent proportion in the capital structure from the Stipulation is $9.3 million. *Id*. at 7.

On Stipulation 3.E– State Income Tax, Ms. Gray states that based on continued evaluation, Staff was able to subsequently concur with EAL witness Whaley's response to Staff's quantification of refund amounts, agreeing with the elimination of several items. She explains that the Stipulation provides for a brief period to allow resolution of an EAL IRS challenge and that thereafter, any refund amounts due customers would be timely returned through a rider. She notes that if EAL's IRS challenge is not resolved by March 31, 2021, then EAL will proceed with refunds. She clarifies that the identified refund amount, exclusive of the amounts under EAL's IRS challenge, is $9,789,673, which would be grossed up if collected in a separate rider, with the amount subject to the pending outcome of the IRS audit at $10,936,518. *Id*. at 7-8.

Ms. Gray testifies that other provisions of the Stipulation provide benefits to ratepayers, such as Stipulation 3.H – AMI Benefits, which addresses the AG's issue regarding additional AMI benefits which lower the Company's request by $1.5 million. *Id*. at 8.

Ms. Gray claims that the benefits of these Stipulation items are adequate considering the concessions Staff made in Stipulation 3.C. and 3.F. She states that additionally, Staff's right to advance an AFUDC adjustment and/or a WCA adjustment in conjunction with a fuller review as afforded in a general rate case proceeding is fully preserved and certainly indicated. She explains that there are at least three areas of EAL's formulaic rate determination where Staff has identified the need for a more comprehensive review subject to the time afforded and rigor of a general rate case and its rounds of testimony, which Rider FRP does not afford. Ms. Gray affirms that Staff has and will further address these concerns in conjunction with EAL's request for extension of FRP. Finally, she observes that Staff has developed in conjunction with this year's evaluation a key issue regarding netting and looks forward to supporting its position before the Commission. She says that Staff supports approval of the Stipulation as a reasonable resolution at this juncture and recommends its approval. *Id*. at 8-9.

IV. Hearing Testimony on Stipulation

A. EAL Witness Cunningham

Mr. Cunningham states that negative CAOL is related to the Other Post-Employment Benefits which is pension benefits that are fully funded, which happened in 2016, and he expects the situation to continue with that account. T. 1539.

Mr. Cunningham testifies that the cumulative 20.8246 percent FRP increase is the accumulation of the five years of FRP increases, assuming that the $68.4 million is approved, and is a step-up over that whole five years, not a one-time jump in rates. He states that in the 2013 rate case, the increase was $16.5 million and in the 2015 rate case, the increase was $28.8 million. T. 1542-43. He does not know if the trajectory for the next four years is going to be that substantial, since there are some things outside of the control of the Company, such as weather and things of that nature that influence those. He points out that in the last two years, on the projected year basis EAL ended up underneath the cap on those years. T. 1546.

B. AG Witness Baker

Ms. Baker agrees with Staff and AEEC on the contested issue. She notes that this is the issue the AG brought up in the Projected Year in testimony filed in 2018 and the concern was that what has happened would happen. T. 2297-98. She testifies that on CAOL and AFUDC being addressed outside the FRP, she has a concern about single-issue ratemaking and how that is brought into the FRP, especially with the extension requested and the need to look at the issues in totality in a rate case or another docket besides the FRP. T. 2298-99.

C. Staff Witness Gray

Ms. Gray testifies that in reviewing how the pension got fully funded causing the CAOL to go negative, the time constraints in a Rider FRP proceeding did not afford the drill down or the deep dive that they felt like would be needed, so Staff fully supports a more comprehensive review. She states that it is counterintuitive from Staff's perspective in the context of the modified balance sheet approach to have a positive liability and it produces perverse results. She does not think that serves the public interest, nor to allow that to continue without a more comprehensive review. She states that Staff sought to have some type of recognition in this case of the one percent in the settlement and went a step beyond that to ensure that even if the settlement uses one percent in the Projected Year, that absent some resolution, be that by a general rate case or other means, then that would also be hard-coded in the true-up or the netting of the Historical Year. T. 2301-02.

Ms. Gray confirms that Staff supports a more comprehensive review for AFUDC, WCA, and CAOL, and that while a policy change perhaps could happen outside a rate case, a large part of why the change is needed is because of the rate impact. Therefore, she concludes that a general rate case provides the most comprehensive means to accomplish this. T. 2304-07.

V. Disputed Issue Testimony

Pursuant to the Revised Joint Issues List, the sole remaining disputed issue is what revenues should be used for the Historical Year Netting Adjustment in Attachment D.6, Line 12. Revised Joint Issues List at 24 (Doc. #626).

A. EAL – Talkington Direct Testimony

Ms. Talkington describes the development of the Historical Year Retail Rate Schedule Revenue. She testifies that the Historical Year's Retail Rate Schedule Revenue reflects actual revenues recorded on EAL's books. According to Ms. Talkington, as prescribed in Attachment C, no adjustments for growth or weather were included and the revenues associated with exact recovery riders were removed. Talkington Revised Direct at 7 (Doc. #519).

Ms. Talkington provides a table which explains the variance between the 2019 Projected Year revenues reported in the 2018 Evaluation Report and the 2019 Historical Year revenues reported in the 2020 Evaluation Report. She notes that the actual 2019 Rider FRP Revenue has been divided into two buckets: (1) actual Rider FRP Revenue associated with the Rider FRP billing rates that were in effect during the 2019 calendar year, which is included in the 2019 actual Retail Rate Schedule Revenue total; and (2) 2019 actual Rider FRP Revenue consisting of the revenue associated with the approved Rider FRP increase that was shown on Attachment A.2, Line 14 of EAL's 2018 Compliance Filing. She explains that in the 2020 Evaluation Report, the 2019 Adjusted Historical Year Rider FRP Revenue is shown on Attachment D.6, Line 12 and is compared to the actual increase in Rider FRP Revenue, which is shown on Attachment D.6, Line 11, in order to arrive at the Netting Adjustment on Attachment D.6, Line 13. She testifies that the amount of 2019 Projected Increase in Rider FRP Revenues from the 2018 Rider FRP Compliance filing (Attachment A.2, Line 14) is zero. Ms. Talkington states that in the 2018 Rider FRP Compliance filing, the Net Change in Required Rider FRP Revenue (Attachment A.2, Line 14) before the application of the constraint was $162,932,524, which was made up of the 2017 Netting Adjustment (Line 10) of $93,719,167 and the 2019 ROE Band Rate Adjustment (Line 9) of $69,213,357. She observes that the Projected Year Rider FRP Revenue Constraint (Line 6) was $66,690,719, causing the increase to Rider FRP Revenue to be consumed by the 2017 Netting Adjustment. *Id*. at 7-10.

<u>B. AEEC – LaConte Direct Testimony</u>

Ms. LaConte testifies that EAL's 2020 Historical Year Netting Adjustment is improper, fails to conform to the language in the tariff, and constitutes prohibited retroactive ratemaking, noting that EAL's proposed netting adjustment improperly ignores the FRP revenues that were recovered in the 2020 Historical Year because the calendar year 2017 netting adjustment exceeded the four percent cap. She opines that ignoring the 2020 Historical Year's FRP revenues as a way to recover costs that exceeded the four percent cap three years ago is retroactive ratemaking, noting that EAL's failure to recognize the Rider FRP revenues overstates the Historical Year's Netting Adjustment. She testifies that the 2020 Historical Year's Netting Adjustment should be revised to include the FRP revenues, which lowers the netting adjustment. LaConte Direct at 7 (Doc. #579).

Ms. LaConte explains that the Historical Year Netting Adjustment is a true-up of the actual revenue requirement and the projected revenue requirement for the Historical Year. She states that the 2020 Historical Year is the calendar year 2019 and that the 2019 projected revenue requirement was included in the 2018 Evaluation Report. Ms. LaConte testifies that in computing the Historical Year Netting Adjustment EAL included the difference between the Historical Year projected revenue requirement of $1,483.7 million and the actual revenue requirement of $1,459.9 million, and then adjusted it for the difference between the Historical Year projected revenue decrease of $17.9 million and the actual Historical Year revenue increase of $3.6 million. Combined these resulted in a net deficiency of negative $45.3 million. She states that EAL also adjusted the netting amounts to include $69.2 million for the "Amount Not Received Because of Cap Constraint," which resulted in a revenue deficiency of $23.9 million rather than a revenue sufficiency of $45.3 million. *Id*. at 8-9.

Ms. LaConte states that EAL claims that it did not receive any of the 2019 Projected Year's revenue deficiency because during the 2018 Rider FRP cycle the Historical Year's netting adjustment exceeded the maximum increase allowed under the FRP due to the four percent cap. *Id*. at 9-10.

Ms. LaConte disagrees with EAL's assumption that it did not recover any of the 2019 Projected Year's revenue adjustment and she argues that it assumes that Rider FRP authorizes EAL to retroactively recover the 2018 Historical Year's costs that were over the four percent cap in the 2020 Projected Year. She asserts that EAL had the opportunity in the 2020 Historical Year to recover those costs, some or all of which would have been recovered if the 2019 Projected Year's revenue deficiency was lower. She declares that it would be retroactive ratemaking and violate the Rider FRP tariff to allow EAL to recover a revenue shortfall determined in a past Rider FRP filing. *Id*. at 10-11.

Ms. LaConte testifies that the Commission has stated that retroactive ratemaking is not allowed. She states that retroactive ratemaking occurs when a utility is allowed to recover past losses in future rates. She asserts that the Commission has already determined the 2019 revenue adjustment and that EAL is taking a "second bite at the apple" by seeking approval from the Commission to ignore its previous determination and carry forward the amount of the 2017 revenue adjustment that exceeded the four percent cap. This would allow EAL to "claw back" calendar year 2017 unrecovered costs in 2021, resulting in retroactive ratemaking. She states that Rider FRP allows EAL the opportunity to recover its projected revenue deficiency and any appropriate historical netting adjustment but it does not guarantee such recovery. *Id*. at 11-12.

Ms. LaConte testifies that EAL's Rider FRP Historical Year Netting Adjustment violates the Rider FRP tariff, which states that a regulatory asset shall not be recorded that represents "the amount by which an FRP increase absent the operation of the 4 percent cap exceeds the actual FRP increase that is implemented pursuant to the operation of this tariff." She argues that EAL is seeking to recover past costs that exceeded the cap from a prior filing which has the same effect as creating a regulatory asset. She asserts that it would not be proper for customers to pay rates in any year to cover costs that exceeded the cap due to EAL's failure to control its costs. She argues that if EAL is allowed to retroactively recover these costs it would create a disincentive for EAL to control its costs. *Id*. at 12-13.

Ms. LaConte testifies that Attachment D.6 in Rider FRP provides the proper calculation of the Historical Year Netting Adjustment. She calculates the 2020 Historical Year netting adjustment, stating that she used amounts provided by EAL in the 2020 Evaluation Report, Attachment E, Item No. 20 to estimate the adjusted Historical Year Rider FRP Revenue as shown in her Table 4.[4] *Id*. at 13-14. She recommends that the Commission reject EAL's attempt to recover costs that exceed the four percent cap, which reduces the netting adjustment and lowers the 2020 Projected Year's revenue adjustment. *Id*. at 15.

Ms. LaConte testifies that her recommendations lower EAL's Projected Year revenue adjustment to an amount which does not exceed the four percent cap. She recommends that the Commission:

- Reject EAL's proposed Historical Year netting adjustment and reduce EAL's netting adjustment.
- Reduce EAL's Projected Year long-term debt cost to 3.7507 percent.
- Reduce EAL's Projected Year revenue adjustment.
- Reduce EAL's total Projected Year revenue adjustment.

[4] The exact amounts of the 2020 Historical Year netting adjustment and the adjusted Historical Year Rider FRP Revenue are marked as HSPI.

Id. at 19-20.[5]

C. Staff – Lindholm Supporting Testimony

Staff witness Lindholm addresses the appropriate dollar amount for Attachment D.6, Line 12, Adjusted Historical Year Rider FRP Revenue. Lindholm Supporting at 3.

She testifies that this is the first year that EAL has filed an Evaluation Report that includes a netting adjustment that looks back to a Projected Test Year that included a netting adjustment in the Rider FRP Annual filing. In her Table 2, she reflects that although the Commission approved a 2019 Projected Test Period revenue increase of $66,690,710 in Order No. 19 of this Docket, EAL reported a revenue change for Historical Year 2019 of $0 on Attachment D.6, Line 12. She observes that EAL witness Talkington states that the Actual Adjusted Historical Year revenue was consumed by the 2017 Netting Adjustment. *Id*. at 4-5.

Ms. Lindholm argues that EAL's adjustment is not appropriate. She points out that it does not matter if the Actual Historical Year Rider FRP revenue was consumed by the 2017 Netting Adjustment because the netting adjustment is based on the "differences between the prior formula rate review test period change in revenue and the actual historical year change in revenue for the same year." She explains that in other words, the change in revenue for the 2019 Test Period as approved by the Commission in Order No. 19 was $66,690,719, while the actual change in revenue for the 2019 Test Period as stated in the Company's workpapers in its AJ01A.4 is $67,400,527, and that therefore, the correct Adjusted Historical Year Rider FRP Revenue that reflects the prior

[5] The exact amounts of the netting adjustment, Projected Year revenue adjustment, and total Projected Year revenue adjustment are marked as HSPI.

formula rate review test period change in revenue is undisputedly this same $67,400,527, not $0. *Id*. at 5-6.

Ms. Lindholm explains how EAL's understated prior formula rate review test period change in revenue impacts the rate calculation on Attachment A.2. She points out that there are two lines on Attachment A.2 that are used to calculate the Rider FRP rate change needed for the Test Period being reviewed. She says that first, Line 14 reflects the Net Change in Required Rider FRP Revenue (constrained by the four percent revenue cap) filed in the Rider FRP Annual Report; which includes both the Projected Year Revenues and the Netting Adjustment. Second, she notes that because EAL reported no 2019 Test Period revenues, the Attachment A.2 Line 10, Netting Adjustment was $23,867,461 instead of a negative $43,533,066, which, all things being equal, is the correct amount to reflect the over-collection made in the 2019 Test Period. She concludes that there is no provision in the FRRA nor in Rider FRP to reflect anything that happens outside the Test Period being reviewed, and that said another way, the Annual Rate is approved based on a specifically designated Test Period. *Id*. at 6.

Ms. Lindholm testifies that the other impact on Attachment A.2. relates to Line 15, the Annualized Filing Year Rider FRP Revenue. She explains that this line was designed to capture previously approved Rider FRP amounts to be included in the rate calculation to ensure that the new rate established in the Annual Test Period review included those previously approved increases. *Id*. at 7.

Ms. Lindholm states that the main take-away of this information is that the $67,400,527 approved for the Projected Test Period 2019 is being collected and is comprehended in Attachment A.2, Line 15 of EAL's Evaluation Report. She says that simultaneously, EAL's proposed adjustment to remove $67,400,527 in the Netting Adjustment on Attachment D.6 overstates needed revenues on Line 14 of Attachment A.2. by the same $67,400,527. Consequently, she concludes that the $67,400,526 in revenues approved by the Commission in Order No. 19 for EAL's 2019 Projected Test Year filing is accounted for twice in the rate calculation on Line 14 and Line 15 in the Revised 2020 Evaluation Report, Attachment A.2. filed August 18, 2020. *Id*. at 7-8.

In regard to her statement that there is no provision in the FRRA nor in Rider FRP to reflect anything that happens outside the Test Period being reviewed, Ms. Lindholm explains that per the terms of the tariff, the definition of Adjusted Historical Year FRP Rider revenue is "the total FRP Rider revenue received for the Historical Year," which precludes references or allowable adjustments for any prior year Netting impacts. She notes that additionally, Rider FRP Attachment C. II. A. 3. requires that the Historical Year shall reflect actual revenues with no adjustments for growth or weather included. Ms. Lindholm says that similarly, Attachment D. 6. Note 3 states that "Adjusted Historical Year FRP Rider revenue is the total FRP Rider revenue received for the Historical Year." She points out that there is no provision in Attachment C which addresses the removal of any portion of the Historical Year revenues, as Attachment C. I. A. specifically states that "revenue and expense effects associated with riders which recover specific costs or other rate mechanisms the utility may have in effect shall not be included ...." She testifies that since Rider FRP does not recover "specific costs" nor is it an "other" rate mechanism, this provision does not address EAL's proposed Netting adjustment. Ms. Lindholm observes that Attachment C. I. C. specifically states "the

Historical Year shall be adjusted to remove rider revenue and expenses, remove amounts, or otherwise make adjustments consistent with the most recent general rate case." She notes that because there was no Rider FRP adjustment in the most recent rate case, this provision is not applicable and concludes that the Attachment C Adjustments do not discuss nor support EAL's Netting Adjustment. *Id*. at 8-9.

Ms. Lindholm testifies that the effect of allowing EAL's adjustment is no different than including a regulatory asset for the Projected Year (2019) revenues in the 2018 filing, and recovering the amount in the current filing. She says that such action would be expressly disallowed per Attachment C. I. K., which states: "EAL shall not record a regulatory asset representing the amount by which an FRP increase absent the operation of the four percent cap exceeds the actual FRP increase that is implemented pursuant to the operation of this tariff." She maintains that there is no provision in the FRRA that allows EAL to underreport revenues from prior filings if they were "consumed" by a prior year netting adjustment. She reports that the netting adjustment between the Projected Test Years and Historical Years is clearly defined in Ark. Code Ann. § 23-4-1206(e)(1), which states that the difference is between the prior formula rate review test period change in revenue and the actual historical year change in revenue for the same year. According to Ms. Lindholm, since the prior formula rate review test period change for Projected Test Year 2019 was approved at $66,690,719 and was actually $67,400,527, the Attachment D.6 Line 12, Adjusted Historical Year Rider FRP Revenue should be the actual Historical Year change in revenue. Therefore, she objects to EAL witness Talkington's Netting Adjustment, which results in EAL overstating Cumulative Total Rider FRP Revenue on Attachment A.2 Line 16 by $67,400,527. *Id*. at 9-10.

D. EAL – Talkington Rebuttal Testimony

Ms. Talkington argues that Ms. Lindholm and Ms. LaConte incorrectly assert that all revenues collected in 2019 were allocable to the 2019 Projected Test Year (and not the 2017 Netting Adjustment). According to Ms. Talkington, not only is their position inconsistent with the FRP legislation and EAL's FRP tariff, but also their recommendation is wholly unfounded, result-oriented, and punitive to EAL. Talkington Rebuttal at 5 (Doc. #616).

Ms. Talkington explains that the Netting Adjustment is a "true-up," which determines the difference between the revenues EAL actually collected during the Historical Year and the revenues that Rider FRP was intended to collect during that year – and adjusts rates to address any over- or under-collection. She states that using the terminology of the FRP, the Netting Adjustment is calculated based on the difference between the actual change in Total Rate Change in Rider FRP Revenue as determined on Line 10 of Attachment D.6 and the Adjusted Historical Year Rider FRP Revenue that EAL received during the Historical Year. *Id*. at 5-6.

Ms. Talkington cites to Ark. Code Ann. § 24-4-1206(e)(1) and Rider FRP Section 44.5.3 and argues that EAL has followed the legislation and tariff language in previous FRP Netting Adjustments. She alleges that the other parties have not only not objected to the approach that EAL used to determine this figure in prior years, but the other parties have agreed with it. She points out that in determining the amount of additional FRP revenue to be collected in the projected year, EAL has first applied those revenues to the collection of the earliest year Netting Adjustment; any balance is then applied to the differences between actual and projected revenues for the immediately preceding year, which is the same methodology that EAL has used in the current Evaluation Report. She also observes that Staff's and AEEC's positions are effectively denying EAL its right and obligation, arising under the FRRA and Rider FRP, to an annual Netting Adjustment by recognizing that a portion of the revenue actually collected in 2019 was attributable to the 2017 Netting Adjustment. *Id*. at 7-8.

Ms. Talkington notes that she discussed the Netting Adjustment in response to the Commissioners' questions at the FRP hearing on November 8, 2017. According to Ms. Talkington, when explaining how the netting adjustment would work if EAL exceeded the four percent cap constraint, she explained that in determining which revenues are collected and which are foregone due to the cap constraint, priority is given to the netting of differences, or "true up," from the earlier year, followed by the revenues associated with the current year. She claims that Ms. LaConte on behalf of AEEC, Mr. Hilton on behalf of Staff, and Ms. Tacker on behalf of the Attorney General generally agreed that the netting methodology follows what Ms. Talkington described. *Id*. at 8-10.

Ms. Talkington reviews EAL's prior FRP filings and explains the methodology that was applied to calculate the Netting Adjustment. She states that for the 2018 Evaluation Report, the first in which EAL calculated a Netting Adjustment for this Historical Year (2017), EAL compared the Total Rate Change in Rider FRP Revenue of $144,620,515 to the Adjusted Historical Year Rider FRP Revenue of $56,901,348 to compute a Netting of Historical Year Differences Adjustment for 2017 of $93,719,167. When added to the ROE Band Rate Adjustment associated with the 2019 Projected Year of $69,213,357, the Commission approved a Net Change in Required FRP Revenue of $162,932,524 for collection in 2019, but which was constrained by the four percent cap to $66,690,719. Ms. Talkington says this caused the increase to Rider FRP Revenue to be consumed entirely by the 2017 Netting Adjustment, so the increase in Rider FRP Revenues attributable to the 2019 Projected Year was zero. She states that the effect was approval of the 2017 Netting Adjustment (but no 2019 Projected Year revenue because of the four percent cap constraint) to be collected in 2019. *Id*. at 10-11.

For the 2019 Evaluation Report, Ms. Talkington recounts that the same methodology compared the Total Rate Change in Rider FRP Revenue of $25,097,088 to the Adjusted Historical Year Rider FRP Revenue of $72,205,405 to calculate a Netting of Historical Year Differences Adjustment for 2018 of ($47,108,317). She explains that to determine the Adjusted Historical Year Rider FRP Revenue, EAL starts with the calculation of the Rider FRP Projected Year Rate Change from Attachment A.2, Line 19 of the 2019 Evaluation Report; percentages attributable to the Maximum Inc./Dec. in Rider FRP Revenue (Att. A.2, Line 14) and Annualized Filing Year Rider FRP Revenue (Att. A.2, Line 15) are calculated and then applied to the actual Rider FRP applicable base revenues as recorded on EAL's books. She says this determines the split of the Historical Year Rider FRP revenues between the Adjusted Historical Year Rider FRP Revenue and the revenue that is attributable to the Annualized Filing Year Rider FRP Revenue which is shown in Attachment D.3. When the ($47,108,317) is added to the ROE Band Rate Adjustment associated with the 2020 Projected Year of $57,221,618, the Commission approved a Net Change in Required FRP Revenue of $10,113,301. She reiterates that the Commission approved a 2018 Netting Adjustment, this time to be refunded to customers in 2020. She confirms that the same methodology was used by EAL in its current FRP filing to determine the Netting Adjustment amount to be reported on Line 12 of Attachment D.6. She states that when comparing the amount of actual revenues received in the Historical Year of $67,400,527 to the amount approved by the Commission, which again, included the 2017 Netting Adjustment, it was apparent that the actual revenues were consumed by that 2017 Netting Adjustment, which means that no revenue in 2019 was received to satisfy the 2019 Projected Year increase in Rider FRP Revenues. Therefore, she concludes that the amount applicable to the 2019 Adjusted Historical Rider FRP Revenue as reported on Line 12 of Attachment D.6 was zero. *Id*. at 11-13[6].

Ms. Talkington argues that Ms. Lindholm and Ms. LaConte propose to reverse the methodology they previously accepted and incorrectly propose to assign to the 2019 Historical Year Netting Adjustment the actual revenues received in the Historical Year of $67,400,527 rather than use adjusted revenues as required by Rider FRP. She opines that this overlooks the fact that the Commission approved a Netting Adjustment for the 2017 Historical Year to be collected in 2019, and that Rider FRP and the FRRA both provide for a netting adjustment. She asserts that this would render the netting adjustment a nullity. She disagrees that EAL has violated the FRRA, recorded a regulatory asset, or used retroactive ratemaking. *Id*. at 13-14.[7]

EAL witness Talkington testifies that by proposing that none of the Rider FRP revenue EAL received in 2019 be used to satisfy the Commission-approved 2017 Netting Adjustment (and instead that all of that revenue received in 2019 be used first to satisfy

[6] As corrected at the hearing. T. 1098.
[7] As corrected at the hearing. T. 1098.

the 2019 Projected Year), Ms. Lindholm and Ms. LaConte effectively eliminate the netting adjustment altogether and deny EAL the opportunity to recover any of the approved 2017 Netting Adjustment. She contends that the proposals by Staff and AEEC are inconsistent with the premise that each year stands on its own because they would assign revenue collected in 2019 for the 2017 Historical Year Netting Adjustment instead to the satisfaction of the 2019 Historical Year Netting Adjustment. *Id*. at 15-16.

According to Ms. Talkington, for a year in which the Netting Adjustment results in a credit (due to over-collection of revenues in the preceding year), Staff's and AEEC's proposals would deny customers the receipt of that credit. She observes that for the 2019 Evaluation Report, the 2018 Historical Year Netting Adjustment resulted in a credit of $47,108,317 [sic]. She claims that under Ms. Lindholm's and Ms. LaConte's proposals, EAL's customers would not receive the benefit of that credit, but under EAL's methodology, the $47,109,317 would be credited to customers. *Id*. at 16-17.

Ms. Talkington concludes that Staff and AEEC have adopted a narrow and result-oriented approach in an effort to achieve some perceived benefit to EAL customers. She asserts that if the Commission were to approve of this complete reversal of the methodology to be used it would not only violate the statute and the tariff but also work harm to customers' interests by potentially depriving them of the benefit of the netting adjustment in years in which the netting adjustment is a credit due to the over-collection of FRP revenues in an earlier year. *Id*. at 19.

VI. Hearing Testimony on Disputed Issue

A. EAL Witness Talkington

Ms. Talkington testifies that in a year where there is a netting adjustment, the netting must be derived in the D Schedules before you can apply the cap. T. 1105-06. She says the total change in revenue from the combination of the B and D Schedules, as reflected on Attachment A.2., is then compared to the four percent cap constraint calculation. T. 1107. She states that the 2018 filing included two parts: the netting adjustment for 2018 and the projected year ROE adjustment for 2019, and that the rates approved to go into effect in 2019 included both a true-up adjustment calculated on Attachment D and an ROE adjustment for 2019. T. 1112. She testifies that the "prior formula rate review test period" would be the historic actual results from that originally projected test year. T. 1114. She explains that you compare the revenue collected pursuant to the projected year calculation to the actual ROE adjustment based on the historical actual amounts. T. 1116.

Ms. Talkington observes that the ROE Band Rate Adjustment on Attachment A.2 comes from the D.6 schedule, and the amount of revenue change is calculated before you apply the cap. T. 1117-18. She states that the Rider creates revenue for EAL by billing a percentage to base rates, and that there is nothing in the Rider which says the company is not collecting the amount included on line 9. T. 1120-21. As relates to the 2018 Evaluation Report, she concurs that there is nothing specific in the law or tariff that mentions $69,213,357 as unrecovered. T. 1122-27. She maintains that AEEC is trying to make something very, very simple that is not overly complicated, but is simplifying it more than it needs to be, while you could say EAL is trying to take something simple and make it more complicated. T. 1130-31. She explains that the cap constraint is compared to line 11, which is the sum of lines 9 and 10; there is nothing specific in the notes in the tariff that says you can determine what is below the cap and what is above the cap in terms of segregating lines 9 and 10, but you have to make a distinction of what the revenues collected were attributable to and look at the tariff in totality. T. 1132-34. She continues that if you do not make the distinctions, then the entire tariff does not work, because the law says there has to be a netting adjustment and it has to be included in the rates. She admits that the law does not specifically say split it so that you can make that distinction, but in order to make the tariff work, she needs to understand what revenues were generated and the genesis of those revenues. T. 1134. In her view, the methodology that Staff and AEEC have proposed allows you to make the netting adjustment, but then you ignore it and do not assume that any revenues that you collected in the projected year are applied to the netting adjustment. T. 1137.

Ms. Talkington believes what the AEEC and the Staff position is, is that when you collect revenues in the projected year, you look at the actual revenues. She testifies that you have to apply all of those revenues to your netting adjustment for what, at that point, was your projected year. She indicates that if she puts a netting adjustment on line 10 that does not have anything to do with the ROE band adjustment that is calculated on the projected year, EAL will collect those revenues, but will only apply it to the projected ROE band adjustment; in such a case, why would she even need to collect the $23 million? She explains that to true-up the projected year, assuming the historic was equal to the projections with no changes, EAL would have over-collected $23 million. She posits that if you cannot distinguish that part of the actual revenues was used to satisfy the netting adjustment, then why would they even be collected? She states that if you automatically assign $68 million to a netting adjustment for an ROE band adjustment that was projected at $44 million, you will automatically over-collect. T. 1137-39. She clarifies that for Attachment D.6 for historical year 2017, the amount on line 12 is the amount of money EAL collected pursuant to the rates that were put into effect in 2017. T. 1140.

Ms. Talkington verifies that EAL's position is that the money that it received in 2019 covered the netting adjustment and there was no money received to go towards the ROE adjustment for 2017. T. 1145. She explains that if you assume that none of the revenue that you collect in a given year, even though it was made up of a netting adjustment and a bandwidth adjustment, is associated with a netting adjustment, it means that the netting adjustment is not necessary. T. 1149.

Ms. Talkington notes that Line 27 of EAL Direct Exhibit BLC-2 is based on the notion that some amount of money for the 2019 increase was unrecovered. She says the total revenue requirement is the amount based on the company earning its allowed return, and that total revenue requirement assumes EAL was able to collect everything that it needed. In order to explain the difference between the projected amount revenue requirement and the historical, she reiterates that you have to recognize that you did not receive all of the money that you needed in the projected year. She acknowledges that the law and tariff do not require Exhibit BLC-2. T. 1156-58.

According to Ms. Talkington, the netting adjustment is part of the ratepayer protections built into the tariff. T. 1159. She asserts that if EAL files the same methodology that is being proposed for this year, that the customers will miss out on a $47 million refund that is due to them next year. T. 1167. In such a case, EAL is going to assign the credit to the older netting adjustment and instead of $10 million being on the netting adjustment for 2022, $57 million will be on that schedule. She notes the need to be able to follow the dollars so that each year stands on its own. T. 1170-71. She believes that the tariff does not specifically outline every single step that is needed to calculate the FRP. T. 1173.

Ms. Talkington testifies that in AEEC Hearing Exhibit 1, EAL's response to Data Request AEEC 19-1, there is no hierarchy of expenses where she can say this one was included and this one was not included; it is a total amount that is reduced because of the cap. T. 1181. Similarly, AEEC Hearing Exhibit 3, EAL's response to Data Request AEEC 16-7, shows the actual revenues collected through the rider's operation from January through June of 2020, but the number that EAL will report on Attachment D.6 line 12 will not include all of the amount; a portion of the revenues will be shown on D.6 and the other portion will be included in the calculation of the unreturned. T. 1191-94.

Ms. Talkington explains that Note 3 to Attachment F.6. line 12 was changed after 2017 to make the sentence much simpler. T. 1199-1202. The assumption that she made then was EAL would have to be able to segregate the revenues that EAL collected into its various components based on how the rate that was billed and approved was developed. T. 1211.

Ms. Talkington avers that there is nothing specific to the tariff language that supports the calculation of a netting adjustment but if you take everything as a whole, Act 725 clearly calls for a netting adjustment. She says if the alternative method proposed by AEEC and Staff is adopted, then it clearly renders the netting adjustment moot. T. 1261-62.

Ms. Talkington states that in the 2018 Evaluation Report, the total amount that was approved to be put into rates for that year was $189.7 million, but the cap limited EAL to $66 million, so the cap limited EAL from even collecting the true-up adjustment; because this is the netting adjustment year, this is the only year EAL has the opportunity to collect the netting adjustment. She explains that if EAL does not assume that any of that revenue attributed to the 2017 true-up, then there is $93 million of costs from 2019 and the netting adjustment is the only opportunity to collect any portion of that; further, even if you attribute $66 million to the $93 million, there is still $26 million that EAL will never collect because of the cap. T. 1264-65. She argues that if the alternative methodology is adopted, the settlement amount of revenue change for this year would go to just barely under a million dollars, and that goes against stable rates and negates the effect of the netting adjustment. T. 1271.

Ms. Talkington states that a complete reversal of methodology means that in each year of the FRP, you have recognized that the revenue collected is made up of more than one piece; it recognizes that you have to look at the revenues and recognize you are collecting not just one amount: part of it satisfies the netting adjustment, part of it satisfies the ROE adjustment, and part of it is the ongoing revenue that you are collecting. She states that although this is the first year where EAL was collecting both a prior year netting adjustment and an ROE adjustment in 2019, to fail to recognize that any of the money was collected pursuant to the 2017 true-up adjustment would be going against the fact that the revenues have to be identified. T. 1272-73. She explains that ratepayers are protected under EAL's methodology because a netting adjustment can be positive or negative; if you do not recognize that the revenue change can include both the positive number to be collected and a negative number to be refunded and you net that, then the customers lose the benefit of that money that should have gone back to them. T. 1273-74.

Ms. Talkington claims that EAL has always split the revenues between two pieces, and this year needs to see if the revenues can be split into three pieces. She remarks that what EAL is doing is prioritizing and trying to figure out what should be at the bottom of the stack for recovery because it is EAL's only opportunity to get what is on the bottom of the stack. She admits that there is no tariff language to say you should stack it that way but if you stack it the other way, then the netting adjustment does not have any effect. T. 1277-79. Without an FRP extension, she notes there would be a true-up for 2020 and 2021 but no projected year filing and the cap would operate the same way. She confirms that for anything over the cap, EAL will not have an opportunity to collect. T. 1281-82.

B. AEEC Witness LaConte

Ms. LaConte testifies that AEEC Hearing Exhibit 4 shows that for 2019, 2020, and 2021, EAL would recover $169.9 million over that period as compared to $125.7 million using AEEC's methodology. T. 1366-68. She says that by not recognizing the revenues that EAL recovered in 2019, it effectively allows EAL to exceed the four percent cap, so therefore, EAL has no incentive to control its cost because it can exceed the cap and recover those in later FRP filings when it does its netting adjustment. She opines that EAL's recommendation for the netting adjustment is guaranteeing recovery of costs that exceed the cap and nullifying the cap. T. 1375.

Ms. LaConte explains that what you net against is the revenue EAL received in 2019; there is no stacking. She supports this position by the tariff language on historical year FRP revenue which refers to Schedule D.6 line 12, which EAL has zeroed out. She says the tariff language recognizes that revenue to be applied to the 2019 cap. She explains that Act 725 is a simple netting adjustment which recognizes what the FRP change in revenue should have been and you net that against what they collected, and that there is no stacking of the amount or breaking down between what should be recovered first and what should be recovered second; it is the sum of the two years and then it is capped, and that is what EAL is allowed to recover. T. 1377-79.

C. Staff Witness Lindholm

Ms. Lindholm testifies that for the 2019 projected year on the 2018 Evaluation Report, line 11 of Schedule A.2. shows $162.9 million, which is composed of the 2017 historic netting adjustment of $93.7 million and the $69.2 million ROE band width adjustment, and the four percent cap constrained that $162.9 million to $66.7 million. She says the 2017 netting adjustment of $93 million on line 10 was put in the 2019 projected year and the actual FRP revenue received for 2019 was $67.4 million. T. 1511-13.

Ms. Lindholm states that there is nothing in the tariff that says, pull it out of this bucket first and then pull it out of this bucket second or bifurcate the revenues. She notes that in a situation like this, it is possible that EAL is not going to have an opportunity to recover that netting adjustment from the 2017 because it is not an exact recovery rider. She says that rates are developed on formulas and there is nothing in the A, B, and D schedules that constitutes making an adjustment before the numbers hit the model to understate revenues. She admits that was not made very clear in the tariff and it certainly was not clear until the current example. T. 1515-17.

Ms. Lindholm points out that this is not a true-up like other riders, this is something that nets; the concept of netting is you take two or more numbers and you come to one number and then you move forward. She contends it is a simplification, and not bifurcating it and putting it into different buckets and pulling it out here and there. She states that the change in the test period revenues is the undisputed $67.4 million, which is about the only thing all parties agree on. She explains that if revenue needed to be adjusted outside of the model, then it needed to be listed in the Attachment C. T. 1519-21.

Ms. Lindholm thinks that the way EAL is netting gives it a chance to pull revenues that it did not get out of one test period and into another, which could potentially give EAL more recovery than it is getting now. Her proposal gives EAL an opportunity to recover prudently incurred costs. She admits that EAL would have more of an opportunity to recover if the rates were a little more stable, and that is probably due to things that have happened outside EAL's control, but this is not an exact recovery rider. She concludes that EAL's proposal leans more toward an exact recover rider. T. 1522-24.

VII. Findings and Rulings

Ruling on Disputed Issue

The sole disputed issue is what revenue should be used for the Historical Year Netting Adjustment in Attachment D.6, Line 12. EAL supports $0, alleging that the actual revenue of $67,400,527 must first be applied to, and was consumed by, the 2017 Netting Adjustment. Staff and AEEC allege that the proper amount is the actual revenue of $67,400,527. The Commission notes that this is the first year in which EAL has filed an Evaluation Report that includes a netting adjustment that looks back to a Projected Test Year that included a netting adjustment in the Rider FRP Annual filing.

The change in revenue for the 2019 Test Period as approved by the Commission in Order No. 19 was $66,690,719, while the actual change in revenue for the 2019 Test Period is $67,400,527. No party denies that the actual FRP revenue received for 2019 was $67,400,527. Both sides contend that their methodology is consistent with the FRRA and Rider FRP.

The FRRA in Ark. Code Ann. § 23-4-1206(e)(1) states:

> If a formula rate review test period utilizes projected data under § 23-4-406 or a projected year, rate changes under §23-4-1207 shall include an adjustment to net any differences between the prior formula rate review test period change in revenue and the actual historical year change in revenue for that same year.

Under the plain language of this statute, the amount to be compared is the "actual historical year change in revenue." There is no provision in the FRRA that allows EAL to adjust actual revenues from prior filings if they were "consumed" by a prior year netting adjustment, prior to entering the amount on Attachment D.6, Line 12.

Turning to the tariff, Rider FRP Section 44.5.3 provides that:

> The Netting of Historical Year Differences Adjustment shall be the adjustment to net any differences between the Historical Year change in Rider FRP Revenue and the Formula Rate Review Test Period change in Rider FRP revenue for that same year. The Netting of Historical Year Differences Adjustment shall be determined in accordance with Attachment D.6. The Netting of Historical Year Differences Adjustment shall then be applied to the Formula Rate Review Test Period Rider FRP Revenue to derive the Total Rider FRP Revenue as set out in Attachment A.2. Netting shall not begin until there is an actual twelve (12) months of Historical Year to report.

In Attachment D.6, Note 3 to Line 12, Adjusted Historical Year FRP Rider Revenue is defined as "the total FRP Rider revenue received for the Historical Year." Staff and AEEC contend that the netting is a simple approach which takes the existing values of the Test Period change in revenues and the historical year change in revenues and arrives at a single amount, as reflected on Attachment D.6 on lines 11, 12, and 13, respectively.

Consistent with the FRRA, Rider FRP does not provide for any adjustments for any prior year netting impacts, nor any prioritization in applying the revenues. Because there is no ambiguity in the statutes or the tariff, there is no reason to interpret what is meant by "Adjusted Historical Year FRP Rider Revenue" and apply any prioritization in the application of revenues not defined in the statute or tariff.

Although EAL admits that there is nothing specific in the tariff or statute that states that it can make the distinction EAL is making in prioritizing application of the revenues, EAL alleges that the tariff in totality supports its position. EAL contends that it is necessary to prioritize recovery because this is EAL's only opportunity to recover the earlier year Netting Adjustment (what EAL terms as the "bottom of the stack"); otherwise, EAL contends, the netting adjustment is "nullity." Therefore, EAL's methodology first applies those revenues to the collection of the earliest year Netting

Adjustment, with any balance then applied to the differences between actual and projected revenues for the immediately preceding year. EAL therefore concludes that the increase in Rider FRP Revenues "attributable to the 2019 Projected Year" was zero. EAL notes that it has a right and obligation under the FRRA and Rider FRP to an annual Netting Adjustment.

The Commission finds no support for EAL's interpretation that calls for prioritization of the "bottom of the stack." The Commission agrees with AEEC and Staff that the FRRA and Rider FRP are not a guarantee of cost recovery, but an opportunity for cost recovery. The FRRA and Rider FRP provide for a netting, not an exact cost true-up or exact cost recovery.[8] The four percent cap constraint contained in the FRRA and Rider FRP, a protection for ratepayers, is another indication that exact cost recovery is not guaranteed.[9] EAL's methodology improperly ignores the FRP revenues that were recovered in the 2019 Historical Year because the calendar year 2017 netting adjustment exceeded the four percent cap.

EAL had its opportunity in the 2020 Evaluation to recover those costs, some or all of which would have been recovered if the 2019 Projected Year's revenue deficiency was lower. The fact that, during the 2018 Evaluation, the Historical Year's netting adjustment exceeded the maximum increase allowed under the FRP due to the four percent cap does not mean that EAL did not receive any of the 2019 Projected Year's revenue deficiency. Requiring EAL to reflect the total FRP Rider revenue received for

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[8] The Commission recognizes that some riders are exact-cost recovery mechanisms, such as EAL's Rate Schedule 42 (Grand Gulf) and Rate Schedule 54 (MISO).

[9] *See also*, the testimony of EAL witness Hugh McDonald in Docket No. 15-015-U, EAL's general rate case in which the Rider FRP was adopted, who indicated that when there is an unrecovered amount in the historical year that carries over, if a company does not cut its expenses or increase its revenues, by definition it is going to forfeit some amount. T. 4603.

the Historical Year does not make the netting adjustment a nullity or deny EAL its right to an annual netting adjustment. EAL has a right to a Netting Adjustment but not a right to guaranteed cost recovery from that Netting Adjustment.

AEEC's and Staff's positions that the effect of EAL's methodology has the same effect as creating a regulatory asset is well taken. Attachment C. I. K. states: "EAL shall not record a regulatory asset representing the amount by which an FRP increase absent the operation of the four percent cap exceeds the actual FRP increase that is implemented pursuant to the operation of this tariff." Prioritizing the "bottom of the stack" advances recovery ahead of other costs and also creates a disincentive for EAL to control its costs. EAL cannot do indirectly what the tariff prevents it from doing directly.

EAL calls attention to EAL witness Talkington's testimony at the November 8, 2017 hearing concerning this priority in the netting of differences, or "true up," from the earlier year, followed by the revenues associated with the current year. EAL indicates that the other parties to the Docket agreed to this interpretation. As noted previously, this is the first year in which EAL has filed an Evaluation Report that includes a netting adjustment that looks back to a Projected Test Year that included a netting adjustment in the Rider FRP Annual filing. In past years, there is no indication that if a prioritization was done, that it had any effect on the revenue amount entered on Attachment D.6, Line 12. Only with the application of the 2020 Evaluation Report's actual numbers does it become apparent that assigning a priority to any category is incorrect. The test here is not whether EAL's methodology in 2020 is consistent with how EAL has applied Rider FRP in the past, but whether the methodology is consistent with the statute and tariff. The Commission finds that it is not.

The actual FRP revenue received for 2019 was $67,400,527 and the Commission finds that this is the amount that should be entered on Attachment D.6, Line 12, as dictated by the plain, unambiguous language of the FRRA and Rider FRP.

Other Rulings

Based on the totality of the evidence presented in this Docket, the Commission finds that the Stipulation is just and reasonable and therefore approves the Stipulation of all other issues as in the public interest.

The revised Rider FRP Rate Adjustment shall take effect January 2, 2021, for the first billing cycle of January 2021.

The Commission notes that with the resolution of the Disputed Issue, the revised projected Rider FRP Revenue Change will be $916,451.[10] While the Commission finds that the increase is consistent with the operation of the Arkansas FRP statutes and EAL's Rider FRP, the Commission continues to be concerned that the operation of the FRP statute could result in continuing year-to-year rate increases approaching or meeting the four-percent cap. The Commission expects all utilities to control their costs in a prudent and reasonable manner and not utilize the FRP as an automatic yearly four-percent rate increase.

Accordingly, the Commission directs and orders as follows:

1. The Stipulation is approved.

[10] EAL Opening Statement at 6 (Doc. #636) and Talkington Hearing Testimony at T. 1271.

2. Attachment D.6, Line 12 should reflect the actual FRP revenue received for 2019 of $67,400,527.

3. To the extent necessary, in accordance with EAL's Rider FRP, EAL shall file within five (5) days after the date of this order revised Rider FRP attachments. The filing shall also identify any revised customer impacts under the approved Revenue Change. The other parties have three (3) days to review the revised Attachment A.1.

4. EAL shall file in this Docket a document showing the cumulative ratepayer impact of the FRP within fifteen (15) days of this final order, incorporating the amount actually approved.

BY ORDER OF THE COMMISSION.

This 11th day of December, 2020.

Ted J. Thomas, Chairman

Kimberly A. O'Guinn, Commissioner

Justin Tate, 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.

Mary Loos, Secretary of the Commission